114-663 14

Vol. 2.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

~~No. 611.~~ 359 574

CALVIN AMORY STEVENS, EUGENE KELLY, JOHN T. TERRY AND PETER GEDDES

Appellants,

vs.

THE EAST TENNESSEE, VIRGINIA AND GEORGIA RAILROAD COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF TENNESSEE.

FILED OCTOBER 8, 1881.

2

1

Deposition of Richard T. Wilson.

UNITED STATES CIRCUIT COURT,

WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement Bonds of Tennessee, issued to the Memphis & Charleston R. R. Co.,

2

vs.

THE MEMPHIS & CHARLESTON R. R. Co. *et al.*

Testimony and proofs for final hearing on the part of the respondents in the above-entitled suit, taken under and pursuant to the 67th Rule in Equity, as amended, before William H. DeLancey, Special Examiner, duly appointed herein.

3

NEW YORK, March 12th, 1880.

4

Present—MR. CHAS. H. TWEED,
For Respondents.
MR. E. L. ANDREWS,
For Complainants.

14

5 RICHARD T. WILSON, a witness produced on the part of the respondents in the above-entitled suit, being first duly cautioned and sworn therein to testify the truth, the whole truth, and nothing but the truth, deposes and says:

(Deposition taken subject to all legal objections of both parties.

1 Q. Did you, on behalf of the East Tennessee, Virginia and Georgia Railroad Company, deliver to
6 the agent of the Comptroller of the State of Tennessee the bonds and coupons mentioned in the receipts signed by P. C. Calhoun, agent of the Comptroller, and dated June 10th, 11th and 14th, 1870, and forming together Respondent's Exhibit No. 4 on your previous examination?

A. Yes. I delivered those bonds and coupons to the agent of the Comptroller of the State on behalf of the East Tennessee, Virginia and Georgia Railroad Company, at divers dates between the 10th and
7 14th of June, 1870, taking such receipts therefor. And I also paid the sum of $11.10 in cash to make up the whole amount of the indebtedness of the East Tennessee, Virginia and Georgia Railroad Company at that time to the State of Tennessee.

2 Q. In addition to the receipts above referred to, did the East Tennessee, Virginia and Georgia Railroad Company afterwards receive from the Comptroller of the State of Tennessee a final receipt acknowledging the payment to him of the bonds,
8 coupons and cash, which you have just referred to?

A. It did. It was delivered on or about the eleventh day of August, 1870, and was and is as follows:

"COMPTROLLER'S OFFICE, } 9
"Nashville, August 11, 1870. }

"STATEMENT.

"Debt of E. T. & Va. R. R. Co., as per statement.....		$2,563,870 70
"Debt of E. T. & Ga. R. R. Co., as per statement.....		1,553,890 40
"Total amount due State July 1, 1870		$4,117,761 10

10

"CREDITS.

"I hereby acknowledge to have received from the East Tennessee & Virginia and East Tennessee & Georgia Railroad Companies the following number of bonds and coupons of the State of Tennessee in liquidation of said debt due to the State July 1, 1870, viz.:

3,835 State Bonds of $1,000 ea.....	$3,835,000 00	11
9,425 past due coupons $30 ea.....	282,750 00	
Currency paid 4th National Bank, N. Y.	11 10	
		4,117,761 10

Signed.

ED. R. PENNEBAKER,

[Seal State of Tennessee.] *Comptroller, &c.*

12

"The above amounts represent the entire indebtness of the railroads above mentioned, and have been credited with such amounts in my office.

ED. R. PENNEBAKER,
Comptroller, &c."

13 3 Q. Were you one of the purchasers of the Cincinnati, Cumberland Gap and Charleston railroad at the sale of that property under the State's lien?

A. I was one of the trustees who purchased that property on behalf of the East Tennessee, Virginia & Georgia Railroad Company.

4 Q. What was the purchase price?

A. $300,000, payable in Tennessee State bonds carrying the coupons due the first of January, 1871, and thereafter.

14 5 Q. Did you as such purchasers pay to the State of Tennessee that amount of the bonds of the State?

A. Yes; we paid those bonds to the State in accordance with the terms of the decree under which we purchased the property,

6 Q. Are you one of the trustees of the mortgage executed by the East Tennessee, Virginia & Georgia Railroad Company, dated June 1st, 1870; and, if so, please produce such mortgage.

15 A. I am one of the trustees, and will produce such mortgage to be annexed to this deposition.

(Mortgage produced, offered in evidence, and marked Respondent's Exhibit No. 1—W. H. D. L., Spl. Exr.)

7 Q. State how many bonds have been issued, and are now outstanding, under that mortgage.

16 A. There have been issued, and are now outstanding in the hands of the general public, $3,123,000 of those bonds.

8 Q. Are you also a trustee under the mortgage of the Knoxville & Ohio Railroad Company dated January 1st, 1876; and, if so, please produce such mortgage?

A. I am such trustee, and will produce such mortgage.

(Mortgage produced, offered in evidence, 17
and marked Respondent's Exhibit No. 2—
W. H. D. L., Spl. Exr.)

9 Q. How many bonds have been issued and are outstanding under that mortgage?

A. There are $500,000 bonds issued and now outstanding under that mortgage and in the hands of the general public.

10 Q. How many bonds have been issued and are now outstanding under the mortgage executed by 18
the Memphis & Charleston Railroad Company and dated the 20th August, 1877.

A. There have been issued and are now outstanding in the hands of the general public $1,400,000 of the first class bonds mentioned therein generally known as first mortgage bonds of the Tennessee Division of the road, which are secured through an assignment of the Tennessee lien under the tripartite agreement. There have also been issued under such mortgage $558,000 of junior bonds which are 19
not secured.

10 a Q. State, so far as you know, how and where the bonds issued under the mortgage just produced, executed by the East Tennessee, Virginia & Georgia Railroad Company and the Knoxville and Ohio Railroad Company and the Memphis & Charleston Railroad Company, are now held.

A. Those issued by the East Tennessee, Virginia & Georgia Railroad Company were mainly sold in Europe, and are held there now probably to the 20
extent of four-fifths of them, and I should say that the remaining fifth is held mainly in New York, Philadelphia and Baltimore, by a good many different parties; the Knoxville and Ohio substitution bonds are held mainly in New York, Boston, Baltimore and Ohio, by sundry persons.

10 b Q. Did any of the present holders of those

bonds, so far as you know, know at the time they became purchasers thereof, of any claim on the part of the holders of the bonds of the State of Tennessee, that bonds loaned to railroads were in any way a lien upon the property of the company to which they were loaned?

A. They were all negotiated before the bringing of these suits, and so far as I know before any public announcement of any such claim as is now attempted to be set up in these suits, and before the public who became purchasers of these bonds could have known of the existence of such claim on the part or behalf of the Tennessee bondholders; as previously stated, I held some of these bonds and had seen the Davies and Davis opinion which I had referred to my counsel but never read; he telling me it was unsound. And this opinion came into my hands then because I was interested in Tennessee railroads, and was not in any way circulated as a public document, so far as I know or believe, for the purpose of putting the purchasers of bonds upon notice of the existence of such a claim.

11 Q. At the time of the settlement of the East Tennessee, Virginia & Georgia Railroad Company with the State in June, 1870, what was the amount of any of the arrears due for interest and sinking fund from the East Tennessee, Virginia & Georgia Railroad Company to the State of Tennessee?

A. In June, 1870, at the time of making its settlement with the State, the East Tennessee, Virginia & Georgia Railroad Company was in arrears to the sinking fund for the instalment thereof, which became due on the first day of January, 1870, to the amount of $152,640 or thereabouts, being four per cent. upon the principal of its indebtednesss to the State of Tennessee at that time, and was also in arrears for the non-payment of the interest on its indebtedness to the State, which be-

came due on the 15th of December, 1869, to the amount of $114,480 or thereabouts, and another interest instalment of a like amount was about falling due to the State on the 15th day of June, 1870; and by the laws of the State the railroad company, besides paying the semi-annual interest instalment, was required to pay to the sinking fund four per cent. annually on the first day of January, and under the law the property of the company was subject to be taken possession of and sold out by the State in consequence of the company's default in respect to the sinking fund.

12 Q. In July, 1877, at the time of the purchase by Iselins of the State lien upon the Memphis & Charleston Railroad, how much was the Memphis & Charleston Railroad Company, if any, in arrears in respect of the interest and sinking fund payments due to the State?

A. At that time the Memphis and Charleston Railroad Company was in arrears to the sinking fund for installments due for several years previously thereto to the amount of $342,541.12, or thereabouts, and was also in arrears for non-payment of interest on its indebtedness to the State, which became due on the 15th day of June, 1877, to the amount of $50,157.40, and also in arrears to the amount of $14,742.40 for the non-payment of a portion of the interest on its indebtedness to the State, which became due on the 15th day of December, 1876, and under the law it was subject to be taken possession of and sold by the State in consequence of such defaults to the sinking fund, and the State had been actually threatening to take possession of the road under its statutory rights.

13 Q. Have you procured from the records of the office of the Comptroller of the State of Tennessee a statement showing the amount paid in by railroads through the retirement of their debts to the State

29 and by sinking fund payments made since January, 1870, and the sales of railroads and other particulars in respect to these matters?

A. Yes, I have procured such a statement, and I now produce it to be annexed to my deposition, with a summary statement of the results thereof, showing payments to the State of bonds, coupons, and money by the railroads, including the payment previously made by the Louisville and Nashville Company, amounting in all to $22,664,827.28.

30

(Statement produced; marked Respt's Exhibit No. 3—W. H. D. L., Spl. Exr.)

14 Q. State, as nearly as you can, what was the amount of the total bonded indebtedness of the State on the 20th day of January, 1870?

A. As nearly as I can state it, and I was pretty familiar with the debt of Tennessee, it was about $37,854,734 of principal, on which there was past
31 due interest amounting to about $2,346,070, making a total of about $40,200,805, about $21,962,827 of which has since that date been realized from the disposition by the State of the railroad assets which it then held.

15 Q. Does the above indebtedness embrace the liability of the State as endorser on the city and railroad bonds endorsed by it?

A. It does not. In addition to the above indebtedness the State was liable as endorser on city and
32 railroad bonds to the extent of about $2,196,000; most, if not all, these endorsed bonds were outstanding on the 20th of January, 1870.

16 Q. Was the settlement made by the Louisville and Nashville Railroad Company with the State of Tennessee of its indebtedness for bonds loaned by the State open and public and notorious?

A. Yes, it was, and besides other publicity given

to it, it fully appeared by the proceedings in the 33
Legislature of the State of Tennessee in the year 1865, including a resolution adopted May 5, 1865, appointing commissioners to settle with that Railroad Company, and the said Commissioners did settle with the Railroad Company, and made a report of that fact to the Legislature of the State of Tennessee, dated November 18, 1865. I produce a copy of this resolution and report to be annexed to my deposition.

17 Q. Was the pendency and passage of the Acts 34
of the Legislature of the State of Tennessee of 1869–70, in respect to the relations between the railroads and the State of Tennessee, open and public and notorious?

A. I was not present in Nashville at either of the sessions of 1869 or 1870, so far as I now remember, but it was a matter of great public concern, provoked considerable discussion and comment, all of which, including the Acts, were published in the newspapers, and attracted a good deal of attention. 35

18 Q. Was the making of settlements between the different railroad companies of Tennessee and the State, in respect of their indebtedness, open and public and notorious when the same took place?

A. Yes, in a certain sense it was public, open and notorious; my firm conducted a very large proportion of the settlements of what were called the solvent roads, or the class that retired their debts and were not sold out, and while we did not state to the public generally while purchasing the bonds that we 36
would at a certain day retire the debt of this or that road, it was nevertheless a fact well known generally, and I always mentioned it to the bondholders of the State, many of whom came in to get information respecting the prospects for the resumption of interest and the settlement of the State debt, and uniformly, and I believe universally, I spoke of this scheme of

retiring the railroad's debts and reducing the indebtedness of the State through these laws and through the sale of the insolvent roads as the only feasible remedy which was open to my mind for the resumption of the interest on the part of the State; in the course of these business transactions I applied to a number of prominent houses in New York and Philadelphia, and the agents of some foreign houses, to induce them to join in furnishing the money with which to conduct these settlements; and in the instance of the East Tennessee, Virginia & Georgia Road, I went to Messrs. E. D. Morgan & Co. and made personal application to Gov. Morgan, with whom I had formed a passing acquaintance, mainly growing out of his interest in the bonds of the State of Tennessee, my former residence there having given me, as he supposed, some opportunity of obtaining more correct information as to the probable course of Tennessee in respect to its indebtedness; and hence when I was ready to undertake the negotiation for the settlement of the indebtedness of the East Tennessee, Virginia & Georgia Railroad Company to the State, my mind first fell on his house as being a strong house of high standing and well known in the streets of New York, and as the proper parties to associate with me in procuring the necessary funds. I went to the office of E. D. Morgan & Co. on several occasions, and after conversing more or less generally on the Tennessee debt subject, I solicited him to make an exchange of their Tennessee State bonds for railroad bonds, to be issued by the East Tennessee, Virginia & Georgia Railroad Company under the acts of 1869-70. I first suggested this method of making an exchange of Tennessee bonds for the bonds of the company on some basis to be agreed upon to be satisfactory to all parties, to enable the company to make a settlement with the State and close out their indebtedness.

I told Governor Morgan that I thought that if the 41
scheme that was contemplated under the acts of 1869 and 1870, and the act for the sale of the insolvent roads could be carried out it would certainly relieve the State, and he agreed with me in thinking so, and that it would enable it to restore its credit. I cannot say whether or not Governor Morgan ever seriously considered the subject of joining with me in the retirement of the debt, but I can certainly say that I explained to him fully my intention in regard to settling with the State the debt which the 42
East Tennessee, Virginia & Georgia Railroad Company owed to it, and he fully approved of such a course being pursued as the best means, and I may say the only means by which the State of Tennessee could be placed in such a position as would enable her to manage her debt most advantageously to all her creditors and herself. And as I have previously stated in this deposition, I had frequent talks with Mr. Peter Geddes about the proposed settlement of railroads with the State, and especially and par- 43
ticularly about the settlement of the Memphis and Charleston Railroad Company's indebtedness to the State, in all of which he showed the same anxiety that I did to have the debts of the railroads to the State settled as proposed, and the State and the railroads divorced, so to speak, from each other. In fact he was exceedingly solicitous to have this separation entire and complete through settlements made by the railroad companies under the acts of 1869 and 1870, and by the sale of the insolvent 44
roads.

19 Q. Were the sales of the insolvent roads also open and public and notorious?

A. Yes, they were.

20 Q. Did you ever know or hear of any action or proceeding being taken of any kind by any bondholder of the State of Tennessee, either in opposi-

45 tion to the settlement with the Louisville & Nashville Railroad, or the passage of the acts of 1869 and 1870 in respect to the relation between the railroads and the State or the settlements thereunder, or to the sales of the insolvent roads made by the State?

A. No, I do not think any such action or proceedings were ever taken; I certainly never heard of any.

21 Q. Have the Knoxville and Kentucky Railroad
46 and the Cincinnati, Cumberland Gap and Charleston Railroad been held by and in possession of the Knoxville and Ohio Railroad Company and the East Tennessee, Virginia and Georgia Railroad Company or R. T. Wilson and C. M. McGhee, trustees, since the time of the purchase of those respective roads?

A. They have been held continuously in the undisputed possession as to the Knoxville and Kentucky Railroad of the Knoxville and Ohio Rail-
47 road Company, and as to the Cincinnati, Cumberland Gap and Charleston Railroad of R. T. Wilson and C. M. McGhee, trustees, and afterwards of the East Tennessee, Virginia and Georgia Railroad Company as transferrees from them.

22 Q. Have you been familiar with the dealings in the New York market in respect to the State bonds of Tennessee since the year 1866?

A. I came here in the summer of 1866, and commenced business in the fall of that year, and since
48 that time I have been more familiar than almost anyone else in New York with the dealings in New York in regard to the bonds of the State of Tennessee.

23 Q. State whether there has been at any time in New York any difference in price between bonds loaned to railroad companies and bonds issued by the State for other purposes, or between those

loaned to railroads of undoubted responsibility and 49
those loaned to railroads which had been sold out by the State.

A. There never has been any difference, nor is now any such difference in the market price of the bonds in the city of New York, except that shortly before the commencement of these suits I heard that one of the complainants was offering a small premium to exchange bonds which he had for bonds loaned to solvent railroads.

24 Q. Did you ever know or hear of any of the 50
bonds of the State of Tennessee being bought or sold as carrying any lien upon the railroad to which they had been loaned?

A. I never did, with the exception mentioned above.

25 Q. To what extent, as nearly as you are able to say, have been your dealings in bonds of the State of Tennessee?

A. It is difficult for me to estimate the exact amount; I have bought, however for the purpose 51
of retiring the debts of the roads to the State, and for making payments for sold roads purchased, about fifteen million dollars of these bonds, and I should think that the dealings of my house, including the number bought for railroad purposes as just stated, would aggregate fully twenty millions of dollars; and I never did in the purchase of all these bonds hear of them carrying a lien on the roads to which any of them were loaned, nor did I ever sell a bond of the State of Tennessee which I 52
represented, or authorized any one to represent, as carrying a lien upon the road, nor did I ever hear of any such understanding on the part of any purchaser from me.

26 Q. What proportion of the bonds dealt in by you were dealt in at the Stock Exchange in the City of New York?

53 A. Nearly all of them; in fact I do not now remember that we ever bought as much as a hundred thousand dollars of bonds off the Stock Exchange; the dealings were almost universally confined and always have been, as far as my information goes, to the New York Stock Exchange.

27 Q. Please state at what time since the war the State of Tennessee has paid interest upon its obligations, and during what portion of the time she has been in default thereon?

54 A. She has been in default on her interest obligations all the time since the war, except that she paid installments of interest in 1867 and 1868, and after the settlements were mainly made between the railroads and the State; she paid three installments of interest in 1874 and 1875, since which time no interest has been paid by her upon any of her obligations.

55

MARCH 29, A.D. 1880.

Present—Counsel as before.

Cross-examination by Mr. ANDREWS:

28 x Q. Did not a holder of Tennessee bonds, about the year 1869 or '70, make demand or claim upon one of the railroads, of which you are an officer, or upon you as their representative in respect of their
56 liability for the payment of the Tennessee bonds issued to them?

A. No holder of a Tennessee bond issued to a railroad with which I have had any connection, or to any other railroad, ever made any demand or claim upon such railroad, so far as I have any knowledge or recollection upon the subject, until these suits were brought.

29 x Q. What did you get Mr. Southmayd's 57
opinion for?

A. I got it as to the legal status of the question—what the law meant. I gave him the Act and asked for his interpretation of it.

30 x Q. Why did you not communicate to James A. Roosevelt and James P. Wallace that the committee of Tennessee bondholders had obtained the opinion of Judges Davies and Davis, to the effect that Tennessee State bonds were liens upon the railroads to which they were issued? 58

A. Firstly, as I have stated before, I did not believe it was sound, and was so advised by Mr. Southmayd. My impression of it at the time it was obtained was that it was intended as a mere scare against somebody or other.

Further, as it was addressed to Mr. Donaldson, as chairman of the Tennessee bondholders' committee, it was their business to circulate it if they believed in its soundness. Certainly I did not consider it my business as I did not believe it. 59

31 x Q. When did you first know Mr. Peter Geddes?

A. I should think in 1874 or '5, somewhere along there, but I really do not remember.

32 x Q. Did you know him in 1875?

A. I am inclined to think I did.

33 x Q. Would you swear that you knew him before 1876?

A. I will not swear exactly when my acquaintance began with him more precisely than I have 60
done.

61 APRIL 3d, 1880.

Present—MR. TWEED, for Respondents.
MR. ANDREWS, for Complainants.

34 x Q. Did you know Mr. Peter Geddes in 1879?

A. Yes.

35 x Q. Did you know him in 1878?

A. Yes.

36 x Q. Did you know him in 1877?

62 A. Yes; I think I did.

37 x Q. Did you know him in 1876?

A. I think so; it is my recollection that I did.

38 x Q. In 1876 how many roads in Tennessee had not delivered to the State bonds under these substitution and selling out laws?

A. As I now remember, the Memphis & Charleston, Mississippi & Tennessee, Mississippi Central, Tennessee & Pacific, and, probably, the Knoxville & Charleston, but some of these roads had delivered
63 some bonds to the State—I refer to the sold out roads.

39 x Q. Is not the Act for Substitution, referred to in your deposition as the Act of July 25, 1869, intended to be referred to as the Act of February 25, 1869?

A. I don't know where in my deposition I have referred to this Act, but I think the latter is the date of the Act.

40 x Q. Were not the substitution bonds of near-
64 ly every railroad in Tennessee that issued them, except the Memphis & Charleston, and perhaps two inferior or small roads, issued and sold before 1874?

A. I can only speak definitely as to when they were issued and sold as to the following roads: The substitution bonds of the E. T., Va. & Ga., the Mobile & Ohio, Nashville & Decatur, Nashville, Chattanooga & St. Louis, Knoxville & Ohio, as I now re-

member, were issued and sold before 1874, or mainly so. 65

41 x Q. Is not this pamphlet the prospectus to which Chas. Tracy's opinion is attached?

A. I think so.

(Complainants' counsel offers said pamphlet in evidence, except opinion of Chas. Tracy already in evidence.)

(Marked Complainants' Exhibit No. 1, W. H. D. L., Spl. Exr.) 66

R. T. WILSON.

Subscribed and sworn to before me, this 3d day of April, 1880.

WILLIAM H. DELANCEY,
Special Examiner.

I, WILLIAM H. DELANCEY, Special Examiner, duly appointed by the Circuit Court of the United States for the Western District of Tennessee, to take the testimony and proofs of both parties in the above-entitled suit, in the City of New York, do hereby certify that on the several days named in the deposition hereto annexed, I was attended at my office, No. 52 Broadway, in the City of New York, by the counsel and witness aforesaid. That the said witness was duly cautioned and sworn in the above-entitled suit and examined, and the deposition was reduced to writing and read to the witness, and by him subscribed in my presence; and that the exhibits hereto annxed, marked Complainant's Exhibit No. 1, W. H. D. L., Spl. Exr., and Respondent's Exhibits Nos. 1, 2, and 3, W. H. D. L., Spl. Exr., were introduced in evidence in said cause during the taking of said deposition. 67 68

Dated April 3, 1880.

WILLIAM H. DELANCEY,
Special Examiner.

69 RESPONDENTS' EXHIBIT NO. 1,
W. H. D. L., Sp'l Ex'r.

DEED OF TRUST OR MORTGAGE.

THE EAST TENNESSEE, VIRGINIA & GEORGIA RAILROAD COMPANY,

To Philo C. Calhoun, Richard T. Wilson and
70 *Adrian Iselin,*

Of the City of New York.

DATED JUNE 1ST, 1870.

THE EAST TENNESSEE, VIRGINIA & GEORGIA RAILROAD COMPANY

71 *to*

PHILO C. CALHOUN, RICHARD T. WILSON and ADRIAN ISELIN, *Trustees, of the City of New York, Dated June 1st*, 1870.

This Indenture, made this first day of June, one thousand, eight hundred and seventy, between the
72 East Tennessee, Virginia & Georgia Railroad Company, a corporation created, organized and operated under and in pursuance of the laws of the States of Tennessee and Georgia, and herein designated party of the first part, and Philo C. Calhoun, Richard T. Wilson and Adrian Iselin, all of New York city, and herein designated parties of the second part.

Whereas, the East Tennessee, Virginia and Geor-

gia Railroad Company was formed and has its ex- 73
istence by virtue of law, by the consolidation of the East Tennessee & Virginia Railroad Company with the East Tennessee and Georgia Railroad Company, and whereas, by virtue of such consolidation, and of the laws under which the said first party was created, and of it organization, and in the exercise of its corporate rights, powers and franchises, the said first party became and is invested with all and singular the corporate rights, powers, privileges and franchises, and likewise with, and owner and occu- 74
pier of all property, real, personal and mixed, and of all debts due, things in action, rights of way, contracts, and all and every other interest whatsoever, which were held, owned and lawfully possessed or exercised by, or which in any way or manner belonged or appertained to the East Tennessee & Virginia Railroad Company, and the East Tennessee & Georgia Railroad Co., corporations created and organized under and by virtue of the laws of the State of Tennessee, with certain rights and priv- 75
ileges under the laws of the State of Georgia, as fully and effectually as the same rights, powers, privileges, franchises, property, debts, contracts, rights of way and other interests were held, owned and exercised by the said last-named corporations, or either of them, at the time of the consummation of the organization executing these presents, but subject however, to all the then existing debts, liens, and other liabilities incurred, created or suffered by the same corporations, or either of them; such 76
debt, liens and liabilities having been, in the consolidation hereinbefore named, legally assumed by said party of the first part hereto, and

Whereas, the State of Tennessee did, at various times, extend aid by loan of the bonds of said State unto the East Tennessee & Georgia Railroad Company, and unto the East Tennessee & Virginia

Railroad Company, for which aid the said State of Tennessee does hold a statutory lien upon the Railroad property and franchises of said last-named corporations; and

Whereas, by laws of the said State of Tennessee, it is provided that the said corporations may make and issue first mortgage bonds covering the Railroad, property, rights and franchises of their corporations, which bonds may be issued as rapidly as bonds of the State of Tennessee are surrendered up to said State by such companies in part payment and discharge of the indebtedness of said corporations to the State of Tennessee for its bonds issued in aid of said corporations to an amount equal to such payments so made from time to time on account of the said indebtedness to the State, and that such bonds so issued, being certified by the Comptroller of the State of Tennessee, acting by himself or through an agent in New York, as in said act prescribed, shall be a lien pro rata in amount and of equal validity and effect with the unretired part of the said State indebtedness upon such railroads, property, franchises, fixtures, and materials.

And Whereas, To enable the said party of the first part to liquidate, pay, satisfy and fully discharge the said indebtedness to the State of Tennessee, and also for the purpose of perfecting its line of railway, and enlarging the capacity, and extending the operating facilities for the business thereof, the said party of the first part has, by the Board of Directors and by convention of the stockholders, extrusted with the control and management of its affairs.

Resolved, To borrow money to an amount not exceeding in the aggregate the sum of ($3,500,000,) three million and five hundred thousand dollars,

and to that end to issue, and raise money by the 81
sale and negotiation of its bonds bearing date the first day of June, Anno Domini One Thousand Eight Hundred and Seventy.

The following is the form of bond and coupon, but may be issued in such denominations as to suit the convenience of the Company:

FIRST MORTGAGE BONDS.

UNITED STATES OF AMERICA.

82

$1,000. $1,000.

The East Tennessee, Virginia and Georgia Railroad Company promise to pay to the holders of this bond, on the first day of July, One Thousand, Nine Hundred ——— for value received, the sum of

ONE THOUSAND DOLLARS.

in lawful money of the United States, in the city of New York, with interest at the rate of seven per 83
cent. per annum payable semi-annualy, on the first day of July and January of each year on delivery of the annexed interest warrant.

This bond, with others of like tenor and date, amounting in the aggregate to a sum not exceeding three millions, five hundred thousand dollars, is secured by a first mortgage on the railroad and franchises of said company, made to Philo. C. Calhoun, Adrian Iselin and Richard T. Wilson, and is entitled to the benefit of a sinking fund as set forth 84
in the deed of trust.

This bond shall pass by delivery or by transfer on the books of the company. After a registration of ownership, certified hereon by the transfer agent of the company, no transfer except on the books of the company shall be valid, unless the last transfer be to Bearer.

85 In Witness Whereof, The said East Tennessee, Virginia and Georgia Railroad Company has caused this Bond to be signed by its President or Vice-President and Secretary, and its corporate seal to be hereunto affixed at the city of Knoxville, Tennessee, the first day of June, Anno Domini, One Thousand, Eight Hundred and Seventy.

President.

{ L. S. }

86 *Secretary.*

And the coupons annexed to which bonds are in the following form :

$35.00. $35.00.

No. The East Tennessee, Virginia and Georgia Railroad Company will pay the Bearer, in the city of New York, thirty-five dollars in lawful money of the United States, on the first day of for semi-annual interest on bond

87 No.

Secretary.

FORM OF CERTIFICATE OF TRUSTEES.

We certify that this Bond is one of a series not exceeding three million, five hundred thousand dollars, described in and secured by the deed of trust or mortgage mentioned herein, bearing date, first of June, Anno Domini, One Thousand Eight

88 Hundred and Seventy, which is duly recorded.

Now Therefore, This Indenture Witnesseth, That for the purposes of securing and making more sure and certain the payment of the sums of money mentioned and provided for in the bonds bearing even date herewith, and each and every one of them, with the interest thereon accruing after actual issue, according to the true intent and meaning thereof, and in consideration of the recited premises,

the loan of said money and the sum of one dollar to 88
the said first party in hand paid by the parties of
the second part at and before the ensealing and de-
livery hereof, the receipt whereof is hereby ac-
knowledged by the said party of the first part, the
East Tennessee, Virginia and Georgia Railroad
Company, the party of the first part aforesaid, has
*granted, bargained, sold, assigned, transferred
and conveyed*, and by these presents *does grant,
bargain, sell transfer and convey* unto Philo C.
Calhoun, Richard T. Wilson and Adrian Iselin, the 90
parties of the second part aforesaid, their heirs and
assigns forever, and to their successor or successors
in the trust and assigns, all and singular, the estate
and property, real, personal and mixed, and all
fixtures, rights, privileges; franchises, easements,
rights under leases, terms and parts of terms, agree-
ments, covenants and contracts of all and every
kind, held and owned or occupied by the said party
of the first part, including all and singular the Rail-
roads and Railways of said Company from and in- 91
cluding the terminus and depot at Bristol, in the
County of Sullivan, State of Tennessee, and thence
to the City of Chattanooga, in the County of Ham-
ilton, in the State of Tennessee, and including the
line from Cleveland, in the County of Bradley,
State of Tennessee, to the City of Dalton, County,
of Whitfield, State of Georgia.

TOGETHER WITH ALL AND SINGULAR, The lands,
tracks, lines, rails, bridges, ways, rights of way,
and materials, buildings, piers, wharves, erections, 92
fences, walls, fixtures, privileges, franchises, rights
and interests, real estate, personal property, choses
in action, leasehold and other things, of, and be-
longing to said party of the first part, of every
kind, nature and character, in either of the said
States of Tennessee and Georgia; and *all* the tolls,
income, issues and profits, to be had or derived

from the same, or any part or portion thereof, or from any part or portion of said term or terms, or either thereof; and all right to receive or recover the same, and all railway stations and depots, with all the appurtenances necessary or convenient for the sole, complete and entire use and operation, as well as maintenance of the said roads or railways, owned or leased by said first party; and also all the locomotives, engines, tenders, cars, carriages, tools and machinery, belonging or appertaining to said railroads and railways so owned as aforesaid; (excepting and reserving therefrom so much of the rolling machinery and other personalty as was purchased from the Government of the United States, in part, by the said East Tennessee and Virginia Railroad Company, and in part by the East Tennessee and Georgia Railroad Company, in or about the Autumn of the year eighteen hundred and sixty-five;) and also all improvements or additions, made or to be made, to any or all of said properties, estates, railroads or railways, and their appurtenances, by said party of the first part or by others; also all and every other estate, interest, property or thing, as well real or mixed as personal, which the said party of the first part own and hold, or may and shall hereafter acquire and hold, necessary or convenient for the use, occupation, operation and enjoyment of all or any of its said railroads, railways, leases and property, rights, privileges and franchises, or any part or portion thereof; and also all rights and privileges to use the said road-beds, tracks, sidings, turnouts and switches, constructed at the execution of these presents, or which may or shall be hereafter constructed for the convenient use of said railroads or railways, or any of them, owned or operated by said first party, as fully and as effectually as the said Company, party of the first part,

is or may be by law entitled to have or acquire. 97
But nothing herein contained shall be held, understood or construed to prevent said party of the first part from selling, hypothecating, or otherwise disposing of any money or securities received in payment of shares of capital stock, or from proceeds of any debts or claims now due to said Company, or from disposing of, by and with the consent in writing of the parties of the second part, or their successors in the trust, any lands or other property and effects not essential or necessary to be retained for 98
the said roadways, depots or station grounds, nor required for the construction or convenient use of the said railways, nor from selling shares, nor from collecting moneys due on capital stock, subscriptions or otherwise, or for other things, provided the said first party shall diligently proceed to apply all such means and proceeds to improving and equiping of said railway and other like necessary purposes thereof; and provided, also, that no default shall have been made, and at the time remain, in the pay- 99
ment of the interest or principal of any of the bonds hereby secured. But even after default in the payment of interest, the Trustees shall have full power, in their discretion, upon the written request of the party of the first part, to convey, by way of release or otherwise, to the persons designated by the said party of the first part, any lands acquired or held for the purposes of stations, depots, shops or other buildings, and no longer required therefor; and shall also have power to convey as aforesaid, on like 100
request, any lands or property which, in the judgment of the Trustees, shall not be necessary for use in connection with said railroad, or which may have been held for a supply of fuel, gravel or other material, and also to convey as aforesaid, on like request, any lands not occupied by the then existing track, which may become disused by reason of

a change of the location of any station-house, depot, shop or other building connected with the said railroad, or any straightening or alteration of the line of the road and such land occupied by the track, and adjacent to such station-house, depot, shop or other buildings, as the said party of the first part may deem it expedient to disuse or abandon by reason of such change, and to consent to any such change, and to such other changes in the location of the track, or depot, or other buildings, as shall have become expedient; and to make and deliver the conveyances necessary to carry the same into effect; provided that any lands which may be acquired for permanent use, in substitution for any so released, shall be conveyed to the Trustees, upon the trusts of these presents; and the Trustees shall also have full power to allow the said party of the first part from time to time to dispose of such portions of the equipments, machinery and implements at any time held and acquired for the use of the said railroad as may have become unfit for use.

To Have and to Hold the said estate, property, rights, privileges, franchises and interest above conveyed or transferred or intended so to be, together with all and singular the emoluments, income and advantages, tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereto, unto the said Philo C. Calhoun, Richard T. Wilson and Adrian Iselin, parties of the second part, and their successors and assigns, on the trusts, and for the uses and purposes herein declared and none other.

And it is hereby declared that the said bonds for three million, five hundred thousand dollars hereby secured, are to be issued under and in pursuance of

and in accordance with the provisions of the Act of 105
Legislature of the State of Tennessee, entitled "an Act to liquidate the State debt contracted in aid of Railroad Companies in the State of Tennessee," passed February 25th, 1869, and the Acts amendatory thereof, and are to to be certified by the Comptroller of the State of Tennessee, either by himself or an agent in New York, and registered in a book kept for that purpose, as provided by the second section of said Act of February 25th, 1869, and that the said bonds hereby 106
secured are to be issued only as fast as permitted by said Act of February 25th, 1869, that is to say, in amounts from time to time equal to the payments made by the said company to the State of Tennessee, on account of the company's indebtedness to the State for its bonds issued in aid of said railroads by surrender of State bonds in discharge of such indebtedness as permitted by said Acts, and that such bonds hereby secured, which shall be so from time to time issued, before the entire discharge of the 107
company's said debt to the State, are to be a lien *pro rata* in amount and of equal validity and effect with the unretired part of the said State indebtedness upon the said railroads, property, franchises and other things hereby mortgaged, as by said Act is provided.

PROVIDED ALWAYS that these presents are made and executed upon the express condition that if the said party of the first part shall well and truly 108
pay or cause to be paid to the holders of the said bonds or obligations intended to be secured hereby, and each and every of them after the same shall be issued, the principal sums of money therein respectively mentioned, at the maturity thereof, according to their true intent and meaning, with the interest thereon accruing at the times and in the way and

manner therein, and in the coupons provided, according to the true intent and meaning of these presents, that then and from henceforth this *Indenture* and the estate hereby granted shall cease, determine and be utterly void and of none effect, without any other release or formal reconveyance, re-entry, acknowledgment of satisfaction, or any other act whatsoever. And the said party of the first part, in consideration of the premises, hereby covenants and agrees to and with the said Philo. C. Calhoun, Richard T. Wilson and Adrian Iselin, their successor and successors in said trust and assigns, that the said first party will at any time or times hereafter, upon the reasonable request of the said parties of the second part, their successors or assigns, execute and deliver, or cause to be executed and delivered, all and every such further and other reasonable deeds, conveyances, assignments and assurances in the law for the better and more effectual vesting and confirming the premises, property, rights and interests hereby granted or intended so to be, and especially for conveying any property subsequently to the date hereof acquired by the said party of the first part, and comprehended in the description contained in this indenture, if any such there be, to the said parties of the second part as trustees for the uses and purposes of this indenture, and to their successors and assigns, as by them, or their counsel learned in the law, shall be reasonably devised, advised or required ; and further, that the said first party will do and perform all the things on the part of the said first party to be done and performed as hereinbefore set forth, and faithfully apply all the money and other things arising from the issue of said bonds, to the purposes hereinbefore recited or mentioned as the objects thereof ; and further, that the said first party will pay unto the holder or holders of the said bonds respectively, the

said principal sums of money therein respectively 113
mentioned and as expressed therein, and the interest thereon as the same shall become due and payable, and the moneys to the trustees of the Sinking Fund as hereinafter provided ; and it is hereby further covenanted, granted, declared and agreed, that in case of default in payment thereof, either principal, interest money, or sinking fund secured hereby, and the continuance of such default for six months after such default shall first have been made or suffered, the said first party shall and will, on demand 114
made after the expiration of such six months by the parties of the second part, their successors or assigns, trustee or trustees, for the time being, or their agent or agents, duly authorized in writing. assign and transfer in due form to them or to their agent or agents, so authorized, the actual possession of all the herein granted and conveyed property and premises, and herein recited and mentioned, or intended to be embraced in this trust; and further, that the expense of taking, holding and managing said 115
property and premises if possession is taken, shall be paid from the income, and if necessary, from the sale of the property and premises, by the said trustee or trustees, as the case may be, for the time being ; and further, that in such case, the parties of the second part, their successors in said trust and assigns, shall and may, by themselves or their officers and agents, take and receive, collect and have the income and profits of the said railways and other property, first applying the same to the pay- 116
ment and discharge of all current necessary operating expenses and repairs, including the expenses hereinbefore mentioned, and all taxes and other similar charges; and next to the payment of all sums of money due and payable upon the aforesaid bonds, issued by said first party, and hereby secured according to the tenor thereof ; and further, that

the said parties of the second part, their successors in said trust, or assigns, having entered as hereinbefore mentioned, into the full possession of the premises, property and estate hereby conveyed, or without having entered into such possession (the said default still continuing) at his or their discretion, and with the approbation of such Court or Courts of Record, either State or Federal, as may have jurisdiction over like trusts, in the State of Tennessee, *may*, or on the written request of the holders of at least one-third of the bonds hereby secured, and then outstanding unpaid, *shall* proceed to sell and dispose of, or cause to be sold and disposed of, all of the premises, property rights, interests, franchises and estate hereby conveyed, or so much thereof as shall be necessary to pay and discharge the principal and interest according to the tenor thereof, of all of such of said bonds hereby secured and then outstanding as may have been issued by said first party, together with all benefit and equity of redemption of said party of the first part therein, by public auction, either in the City of Knoxville, Tennessee, or in the City of New York, to the highest bidder, having previously given public notice of the time, place and terms of said sale, and of the property to be sold, by publishing the same in at least two newspapers of good general circulation, in each of the said cities, and wherever else the trustees may deem expedient or required by law, for the period of at least ninety days previous to such sale ; and as the attorney or attorneys of the said first party, for that purpose by these presents, duly constituted and appointed, make, execute and deliver to the purchaser or purchasers thereof, a good and sufficient deed or deeds of conveyance in the law for the same, granting and assuring to said purchaser or purchasers all such estate, right, property, franchises and interest, and to the

same extent as the said first party had therein at 121
the date hereof, or at any time subsequent, and also
a good and sufficient transfer and assignment of
said personal property, choses in action, contracts
and leases.

And out of the moneys arising from such sale or
sales, it shall be lawful for and the duty of such
Trustees, after first retaining the costs and charges
of advertisement, and of the said sale of the premi-
ses, and all other sums of money which said trus-
tees, or their successors in said trust, may have 122
been obliged to pay, by reason of their taking pos-
session of, and operating said premises, and a
reasonable allowance for their own services, and for
legal professional advice, aid and assistance, in
effecting and consummating said possession, opera-
tion and sale; and also to pay, in so far as such
proceeds shall suffice therefor, the principal and
interest, whether then due or yet to become due,
which shall then remain unpaid on said bonds re-
maining issued and outstanding, and hereby secured 123
as aforesaid, for the benefit of, and to be paid to the
holders thereof, and then restore the residue of the
said proceeds, if any there be, to the said party of
the first part; it being hereby expressly understood
that the bonds issued by said first party, and
secured by these presents, shall be ratably re-
ceivable, if desired by the holders thereof, in
payment of said sale by said trustees or their suc-
cessors, to the extent of the amount of the net
proceeds of such sale properly applicable to the 124
payment of such bonds respectively; and the
said sale, when fully consummated, shall be a per-
petual bar, both in law and equity, against the said
party of the first part, and all persons claiming or
to claim the premises, or any part thereof, by,
through or under said party of the first part, sub-
sequent to the date of these presents; *and in no*

125 *case* shall any claim or advantage to be taken of any valuation, appraisement or extension laws by the party of the first part, nor any injunction or stay of lawful proceedings hereon, nor shall any process be applied for or obtained by the said party of the first part to prevent or obstruct such lawful entry or sale as aforesaid, but the same are hereby expressly waived by the said party of the first part.

The party of the first part further agrees that at the expiration of two years from the date hereof
126 and every twelve months thereafter, an amount of money derived from the net earnings of said road, equal to one per cent. on the amount of bonds issued and outstanding under provisions hereof shall be set apart as a sinking fund for the redemption of the bonds secured by these presents, and it shall be the duty of the party of the first part to invest the said sinking fund and the interest accruing thereon in the bonds herein secured, at a rate not exceeding ten per cent. above par and accrued interest. And
127 the bonds so purchased shall be immediately registered, stamped or endorsed as irrevocably belonging to said sinking fund, and not further transferable, and said bonds and coupons when stamped, registered and assigned to said sinking fund, shall remain in force only for the purposes thereof, and shall by said stamping, transferring or registering, become void and cancelled thereafter for all other purposes. In case the bonds herein secured cannot be purchased as above within three months after
128 maturity and payment of money for account of the sinking fund, then shall such other good securities, as the parties hereto may agree upon, be purchased, and assigned to said sinking fund, and all shall be held deposited with such depository and in manner as the parties hereto shall from time to time mutually agree upon, and the interest accruing on the sinking fund shall be collected by the party of the first part and invested as hereinbefore provided.

AND THIS INDENTURE further witnesseth, that these presents and the said bonds hereby secured or intended so to be, are made, executed and issued or delivered, upon the terms, conditions and agreements following, that is to say: 129

First. That the actual possession, use, management and control of all the hereinbefore granted estate, property and premises, shall be, and remain in and with the said party of the first part, so long as the bonds so issued shall be and remain without forfeiture or default in respect of interest or otherwise. 130

Second. That in the case of any vacancy in the said trusteeship hereunder, by the incapacity to act, death or resignation of either of the said trustees, or from any other cause, all his estate, right, interest, power and control, shall be thereupon divested, and cease and determine, but without destroying, or without any discontinuance of the trust: and the said party of the first part *shall*, or upon default 131 or omission to take proceedings therefor for thirty days after notice of such vacancy or incapacity, the holders of not less than thirty-three and one-third per centum in amount of said bonds hereby secured, *may* apply to any of the Courts having jurisdiction in the premises, in the State of Tennessee, to appoint a new Trustee or Trustees to supply the vacancy; and such proceedings may be had, and appointments made, as often as the like occasion may require the appointment of a Trustee to execute the 132 trust herein declared; and when so appointed, such new Trustee shall thereupon become vested for the purposes of the said trust, with all the estate, rights, interests, power, property and control, hereby conveyed or granted to, or vested in the said Philo C. Calhoun, Richard T. Wilson and Adrian Iselin, by these presents, without any further as-

surance, grant or conveyance of the same as fully and effectually as if such appointment had been originally made herein. But if the same shall be necessary, both the said party of the first part, and such new Trustee, or either of them, shall make, execute and deliver all necessary conveyance and agreements, and grants and powers, and authorities for that purpose.

And it is further understood and agreed by and between the parties to these presents, that the said parties of the second part, their successor or successors in said trust, shall only be accountable for reasonable diligence in the management thereof, and shall not be responsible for the acts or negligencies of any agent or agents, necessarily employed by them, when such agent or agents are selected with proper discretion or with the approbation of the said party of the first part. And the officers of the said Railroad Company shall have at all times the right to inspect the books kept by the receivers of the road and their agents.

And This Indenture further witnesseth that the said parties of the second part hereby accept the aforesaid trusts, and also covenant and agree to and with the said party of the first part, to execute the same upon the terms and conditions hereinbefore as well as hereinafter mentioned and provided, and which said terms and conditions are hereby mutually agreed to and upon, by both of the parties to these presents, and that the said trustees and their successors may employ and advise with legal counsel, and that the expense thereof, as well as other personal expenses of the said Trustees, for the time being, in the discharge of said trusts, and all other, their reasonable and proper charges and expenses thereof, including their compensation, shall be paid by the party of the first part, as they are incurred,

or otherwise out of the trust, estate or income on 137
which or to which they are chargeable; and likewise that the said trustees or their successors shall not be required to act in the execution of said trusts, except at their own option, unless the party requesting so to do shall furnish them reasonable indemnity against the loss, costs, trouble and expense they may incur, or be at in so doing; and that when called upon to act they shall be, and are hereby authorized and invested with full power, at their option, under advice of legal counsel, to submit all 138
questions of law or fact arising in the execution thereof to arbitrators; that they, in the execution of said trusts, may employ agents and attorneys in fact to act in their behalf, whenever required to act as aforesaid, except when they may be or are required by law to act personally; and also, that all covenants and agreements hereinbefore contained or implied may be executed specifically by and through any of the said Courts of competent jurisdiction as practised by them in like cases of trusts. 139

It is fully understood that any two of the three Trustees aforesaid, or their successors, shall be sufficient for carrying into effect the purposes of this trust.

IN TESTIMONY WHEREOF the said party of the first part, in pursuance of authority, given by law, and in conformity with the order of the Board of Directors, has caused this INDENTURE to be signed by its President, or Vice- 140
President, and , Secretary, and the Corporate Seal of the Company affixed thereto, and the parties of the second part have hereunto subscribed their names and affixed their seals the day and year first in this INDENTURE mentioned.

141 EAST TENNESSEE, VIRGINIA AND GEORGIA RAILROAD CO.,
BY THOS. H. CALLAWAY, [SEAL.]
President.
JAMES G. MITCHELL, [SEAL.]
Secretary.

W. C. HENNEGAR,
his
TOLBERT × HAMILTON.
mark.

142 P. C. CALHOUN, [SEAL.]
R. T. WILSON, [SEAL.]
ADRIAN ISELIN, [SEAL.]
Trustees.

F. E. LATHROP,
CHARLES NETTLETON,
As to P. C. C., R. T. W. and A. Iselin.

STATE OF NEW YORK, } ss.:
CITY AND COUNTY OF NEW YORK. }

143 Be it remembered that on this 1st day of June, A. D. 1870, before me, Charles Nettleton, a Commissioner resident in the City of New York, duly commissioned and qualified by the executive authority and under the laws of the State of Tennessee, to take the acknowledgment of deeds, etc., to be used or recorded therein, personally appeared Philo C. Calhoun, Richard T. Wilson and Adrian Iselin, parties to the foregoing deed, with each of
144 whom I am personally acquainted, who severally acknowledged that they executed the said deed for the purposes therein mentioned as Trustees therein described.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal.

[SEAL.] CHARLES NETTLETON,
Commissioner for Tennessee in New York,
117 Broadway, New York City.

STATE OF NEW YORK, }
CITY AND COUNTY OF NEW YORK. } ss.: 145

Be it remembered that on this 1st day of June, A. D. 1870, before me, Charles Nettleton, a Commissioner resident in the City of New York, duly commissioned and qualified by the executive authority and under the laws of the State of Georgia, to take the acknowledgment of deeds, etc., to be used or recorded therein, personally appeared Philo C. Calhoun, Richard T. Wilson and Adrian Iselin, to me personally known to be the individuals named 146 in and who executed the foregoing deed, who severally acknowledged that they executed the same for the purpose therein named and mentioned as Trustees therein described.

GIVEN under my hand and official seal,
this 1st day of June, A. D. 1870.

[SEAL.] CHARLES NETTLETON,
Commissioner for Georgia in New York,
117 Broadway, New York City. 147

STATE OF TENNESSEE, }
KNOX COUNTY. }

On this, the 8th day of May, 1871, before me, J. L. A. Blany, Clerk of the County Court, in and for the County and State aforesaid, personally appeared J. G. Mitchell, to me personally known and to me known to be Secretary of "The East Tennessee, Virginia and Georgia Railroad Company," and 148 being by me duly sworn, did depose and say, that he is now, and was at the time the foregoing Deed in Trust was executed, Secretary of said Corporation, and that Thomas H. Callaway was at that time its President; that they executed said Deed for the purposes in said Deed set forth and expressed for and in behalf of said Corporation, subscribed their

149 names as Secretary and President, and affixed the seal of said Corporation thereto, by authority of said Corporation; and at the same time Wm. C. Hennegar and Tolbert Hamilton, personally known to me to be the subscribing witnesses to said Deed appeared before me, and being duly sworn, severally deposed and said, that they were well acquainted with the aforesaid J. G. Mitchell and Thomas H. Callaway, and knew that they were Secretary and President of "The East Tennessee, Virginia and
150 Georgia Railroad Company," and that they executed the foregoing Deed in Trust in the manner hereinbefore stated, and delivered the same as the Act and Deed of said Corporation for the purposes in said Deed set forth and expressed, on the day it bears date.

WITNESS my hand and Official Seal of
[SEAL.] office, at office in Knoxville, the 8th day of May, 1871.

151 J. L. A. BLANY, *Clerk.*

STATE OF TENNESSEE, }
Sullivan County. }

I, OWEN M. WHITE, Register for said County, do hereby certify that I received and re-registered the foregoing Mortgage or Deed of Trust, and the certificates thereto attached on the 12th day of May, 1871, at 7 o'clock A. M., and the same is entered in Note Book No. 2, page
152 75, and re-registered in Book Volume 23, commencing on page 99.

Given under my hand, at office at Blountville, 12th day of May, 1871.

O. M. WHITE, *Register.*

The foregoing Deed of Trust or Mortgage came to hand on the 12th day of May, 1871, at 3 o'clock

P. M., and was duly re-registered in Book "R," 153
page 19, in the Register's Office of Carter County, Tennessee.

A. L. HILTON, *Register.*

By WM. R. FITZSIMMONS, D. R.

STATE OF TENNESSEE,
Greene County.

Register's Office, May 13, 1871, 10 o'clock, A. M. 154
Then was the foregoing Mortgage or Deed of Trust received for registration and duly re-registered in Book No. 38, commencing on page 1, and noted in Book No. 3, page 20.

Given under my hand, at office in Greenville, Tennessee, this 13th day of May, 1871.

THOS. LANE, *R. G. C.*

155

STATE OF TENNESSEE,
Washington County.

Register's Office, May 13, 1871, 6 o'clock, P. M. Then was the foregoing Instrument or Mortgage received for registration and re-registered in Vol. 42, page 537 and following pages, and entered in Note Book "C," page 28.

Given under my hand, at office at Jonesboro, this day.

156

J. W. C. DEAKE, *Deputy County Register.*

STATE OF TENNESSEE,
Hamblen County.

I, L. B. SMITH, Register of the County aforesaid, do hereby certify that the foregoing Instrument or

157 Mortgage was received in my office for registration, at 10 hr. 30 min., A. M., May 15, 1871, and duly registered in Deed Book No. 1, page 86.

L. B. SMITH, *Register.*

STATE OF TENNESSEE,
Hawkins County.

Register's Office, May 16, 1871, at 8 o'clock, A. M. Then this Deed of Trust, with the Clerk's
158 Certificate, was received and re-registered in Book "B," commencing on page 512, etc.

JOHN WALKER,
Register for Hawkins County.

ROGERSVILLE, May 16, 1871.

STATE OF TENNESSEE,
McMinn County.

159 12:10 P. M., May 18, 1871. Then was the foregoing Mortgage Deed received and noted in Note Book "B," and registered in my office in Book "P," pages 507, etc.

WM. C. DAVIS, *Register.*

STATE OF TENNESSEE,
Hamilton County.

Register's Office, the 18th day of May, 1871, at 8
160 o'clock, P. M. Then was the foregoing Instrument and Certificates received for registration, and is now of record in Book "U," pages 400 and following.

Witness my hand, at office in Chattanooga, the day and date last above written.

JOHN F. HAMILL, *Register.*

Per J. E. DEARING, D. R.

STATE OF TENNESSEE, }
James County. } 161

Register's Office, the 19th day of May, 1871, at 5:20 o'clock, A. M. Then was the foregoing Instrument of Mortgage and the Certificates of Probate received for registration, and is now of record in Book No. 1, commencing on page 5 and following.

Witness my hand, at office at Ooltewah, Tenn., the day and date last above written. 162

JOHN G. RUSTON, *Register.*

STATE OF GEORGIA, }
Whitfield County. }

Clerk's Office, Superior Court, Whitfield county, May 19th, 1871, 10 o'clock, A. M. This was the foregoing Instrument of Mortgage and the Certificates of Probate received for registration, and is now of record on page 1 in Book "G" of this office, and re-registered for supposed insufficiency of 163 probate, on page 153 in Book "G," and following.

Witness my hand, at office this day and date above written.

H. C. HAMILTON, *Clerk D. C. W. C.*

STATE OF TENNESSEE, }
Loudon County. }

The foregoing Mortgage Deed, together with the Certificates of Probate thereto, are duly noted in 164 the Register's office for Loudon county, in Note Book "A," page 11, at 7 o'clock, P. M., May 19th, 1871, and registered in Record Book "A," commencing on page 72 and following, same day.

Given at office, in Loudon, this May 19th, 1871.

FRANCIS BEALS, *Register for Loudon Co.*

165 STATE OF TENNESSEE,
Roane County.

Register's Office, May 20th, 1871, 8 o'clock, A. M. Then was the foregoing Instrument of Mortgage received for registration, and noted in Note Book "A," page 107, and with the Certificates of Probate thereon registered in my office in Book "R," commencing on page 255.

Given under my hand, at office at Kingston, date last above written.

166 J. C. CLARK, *egister for Roane Co.*

STATE OF TENNESSEE,
Jefferson County.

Register's office, May 24, 1871. Then was the within Mortgage and Clerk's Certificate of Probate recorded in Deed Trust Book No. 1, on page 193, which came to hand May 24, 1871, at 4 o'clock, P. M.

167 Given under my hand, at office in Dandridge, the day and date above written.

W. M. HILL, *Register for Jefferson Co.*

STATE OF TENNESSEE,
Granger County.

Register's office, May 25, 1871. Then was the within Instrument and Certificate of Probate recorded in Note Book "A," page 146, at 7 o'clock, P. M., and registered in Trust Book No. 1, commencing on page 76.

168

Given under my hand, at office in Rutledge, the 25th day of May, 1871.

HENRY SHEPERD, *Register of Granger Co.*

STATE OF TENNESSEE, }
Knox County. } 169

I, CHARLES MORROW, Register of Knox county, do hereby certify that the foregoing Mortgage was received at my office, at 8 o'clock, A. M., May 27, 1871, and registered in Mortgage Book "A," commencing on page 508.

Witness my hand, at office in Knoxville, this 27th May, 1871.

CHARLES MORROW, *Register for Knox Co.* 170

STATE OF TENNESSEE, }
Monroe County. }

I, E. D. MALONE, Register of Monroe county, do hereby certify that the foregoing Mortgage was received at my office, at 7 o'clock, P. M., May 29, 1871, and registered in Book "A," for Trust Deeds, commencing on page 190.

Witness my hand, at office in Madisonville, day and date last above written. 171

E. D. MALONE, *Register.*

STATE OF TENNESSEE, }
Bradley County. }

I certify that the foregoing Mortgage was received this day at 6 o'clock, P. M., and noted in Book "A," page 64, and with the Clerk's Certificate, is duly noted for registration in my office, in Book "B," pages 139–40, etc. 172

JOSEPH W. HICKS, *County Register.*

May 30, 1871.

173 RESPONDENT'S EXHIBIT No. 2.
W. H. D. L.. Sp'l Ex'r.

KNOXVILLE & OHIO RAILROAD.

Copy of Mortgage or Deed of Trust.

This indenture made on this, the first day of January, 1876, between the Knoxville & Ohio Railroad
174 Company, a corporation created, organized and operated under and in pursuance of the laws of the State of Tennessee, and herein designated party of the first part, and R. T. Wilson, of New York City, in the State of New York, and W. T. Walters, of the city of Baltimore, in the State of Maryland, and herein designated parties of the second part, witnesseth, that, whereas, at a general meeting of the stockholders of said Knoxville & Ohio Railroad Company, duly and regularly convened on the 24th
175 day of September, 1875, and by several adjournments continued till the 11th of November, ensuing, it was resolved that the directors shall forthwith prepare and cause to be issued, coupon bonds bearing seven per cent. (7%) interest payable semi-annually, and payable to bearer, to the amount of ($500,000) five hundred thousand dollars, and secure the same by mortgage or deed of trust upon all the property and franchises of the company, with such conditions and provisions as the Board of Directors
176 shall deem proper and judicious; and whereas said board of directors, in the execution of the duty enjoined upon it by said resolution, have issued one thousand bonds for ($500), five hundred dollars each, bearing even date with these presents and falling due thirty years after date, with coupons attached; bearing interest at seven per cent (7%) per annum, payable semi-annually, on the first days of

January and July, in each and every year, in the 177
city of New York, subject to be called in and paid at any time at the option of the party of the first part, after thirty days notice to be given, as stipulated in said bonds, to be put upon the market and sold in the manner and for the purposes expressed in said resolution, the payment whereof the party of the first part is desirous of securing; and which said one thousand bonds, bearing date as aforesaid, are of like tenor and in the form following, to-wit:

178

No. $500.00.

UNITED STATES OF AMERICA.

THE KNOXVILLE & OHIO RAILROAD COMPANY.

First Mortgage Bond.

The Knoxville & Ohio Railroad Company, for value received, promises to pay the bearer hereof, on the 1st day of January, one thousand nine hundred and six, five hundred dollars, lawful money 179
of the United States, in the city of New York, with interest thereon in the meantime at the rate of seven per cent. per annum, payable in like lawful money, in the city of New York, semi-annually, on the first days of January and July of each year, on presentation and surrender of the annexed interest warrants. This bond is one of a series numbered from one to one thousand inclusive, for five hundred dollars each, amounting in the aggregate to five hundred thousand dollars, issued of this date, and 180
which are secured by a Deed of Trust or Mortgage bearing even date herewith, conveying in trust unto William T. Walters, of Baltimore, Maryland, and Richard T. Wilson, of the city and State of New York, all the property and franchise of said Knoxville & Ohio Railroad Company; and upon default in the interest payments hereon, this bond becomes

181 due and payable, as defined in said mortgage, or Deed of Trust. It is understood and agreed by the holder of this bond that the said Knoxville & Ohio Railroad Company, has the privilege of paying the same and accrued interest at any time before maturity, by giving notice of their wish to do so for thirty days in one newspaper each in New York City, and Knoxville, Tennessee, and that interest on this bond will cease at the end of said thirty days' notice.

182 In witness whereof the said Company has hereunto affixed its corporate seal and caused this bond to be signed by its President and Treasurer, this first day of January, 1876.

President.

Treasurer.

183 And the coupons annexed to which bonds are in the following form :

$17.50. $17.50.

The Knoxville & Ohio Railroad Company, will pay to the bearer in the City of New York, seventeen $\frac{50}{100}$ dollars in lawful money of the United States, on the first day of for semi-annual interest on bond No.

184 *Treasurer.*

Which coupons are to be issued with the lithographed signature of the Treasurer of said Company, and, when thus issued by said company, are to be as binding upon it as if such signature were written by the Treasurer.

Form of Trustees' Certificate. 185

We hereby certify that this is one of the bonds issued under the deed of trust or mortgage therein referred to.

Trustees.

Now, therefore, this indenture witnesseth that, for the purpose of securing and making certain the payment of the sums of money mentioned and provided for in the said one thousand bonds, and each 186
and every one of them, with the interest accruing thereon, after the same shall be sold according to the true intent and meaning thereof, and in consideration of the recited premises, the purchase money to be paid therefor, and the sum of one dollar to the said first party in hand paid by the parties of the second part at and before the ensealing and delivery hereof, the receipt whereof is hereby acknowledged by the said party of the first part, the said Knoxville and Ohio Railroad Company, the party of 187
the first part aforesaid, hath granted, bargained, sold, assigned, transferred and conveyed, and by these presents doth grant, bargain, sell, assign, transfer and convey unto the said R. T. Wilson and W. T. Walters, the aforesaid parties of the second part, as joint tenants and not as tenants in common, and the survivor of them, their heirs and assigns forever, and to their successor or successors, all and singular the estate and property, real, personal and mixed, and [all privileges, rights, franchises, easements, 188
rights under leases, terms and parts of terms, agreements, covenants and contracts, of all and every kind, held and owned or occupied by the said party of the first part, including all and singular the railroads and railways of said Company, from and including the terminus and depot at Knoxville, in the County of Knox and State of Tennessee, and thence

to Careyville, in Campbell County in said State, together with all and singular the lands, tracts, lines, rails, bridges, ways, rights-of-way and materials, buildings, piers, wharves, erections, fences, walls, fixtures, privileges, franchises, rights and interests, real estate, personal property, choses in action, leasehold and other things of and belonging to said party of the first part of every kind, nature and character; and all the tolls, income, issues and profits to be had or divided from the same or any part or portion thereof, or from any part or portion of said term or terms, or either thereof; and all right to receive or recover the same; and all railway stations or depots with all the appurtenances necessary or convenient for the sole, complete, and entire use and operation as well as maintenance of said road; and also all the locomotives, engines, tenders, cars, carriages, tools and machinery belonging or appertaining to said railroad or railway; and also all improvements or additions made or to be made to any or all of said properties, estates, railroads or railways and their appurtenances by said party of the first part or by others, and all and every estate, interest, property or thing as well real or mixed as personal, which the said party of the first part own and hold, or may and shall hereafter acquire and hold, necessary or convenient for the use, occupation, operation or enjoyment of all or any of its said railroads, railways, leases and property, rights, privileges and franchises or any part or portion thereof; and also all rights and privileges to use the said road-beds, sidings, tracks, turnouts and switches constructed at the execution of these presents, or which may or shall be hereafter constructed for the convenient use of said railroads or railways or any of them, owned or operated by said first party, as fully and effectually as the said company, party of the first

part, is or may be by law entitled to acquire or have. 193
But nothing shall herein be held, understood or construed to prevent said party of the first part from selling, hypothecating or otherwise disposing of any money or securities received in payment of shares of capital stock, or from proceeds of any debts or claims now due to said company, or from disposing of by and with the consent in writing of the parties of the second part, or successors in the trust, any land or other property and effects not essential or necessary to be retained for the said road-way, depots or station 194
grounds nor required for the construction or convenient use of the said railways, nor from selling shares, nor from collecting moneys due on capital stock subscriptions or otherwise, or for other things, provided the said first party shall diligently proceed to apply all such means and proceeds to improving and equipping said railway and other like purposes thereof, and provided also that no default shall have been made and at the time remain in the payment of the interest or principal on any of 195
the bonds hereby secured. But even after default in payment of interest the trustees shall have full power in their discretion, upon the written request of the party of the first part, to convey by way of release or otherwise to the persons designated by the said party of the first part, any lands acquired or held for the purposes of stations, depots, shops or other buildings and no longer required therefor, and shall also have power to convey as aforesaid on like request any bonds or property, which, in the judg- 196
ment of the trustees shall not be necessary for use in connection with said railroad or which may have been held for a supply of fuel, gravel or other material, and also to convey as aforesaid on like request any lands not occupied by the then existing track which may become disused by reason of a change of the location of any station house, de-

to Careyville, in Campbell County in said State, together with all and singular the lands, tracts, lines, rails, bridges, ways, rights-of-way and materials, buildings, piers, wharves, erections, fences, walls, fixtures, privileges, franchises, rights and interests, real estate, personal property, choses in action, leasehold and other things of and belonging to said party of the first part of every kind, nature and character; and all the tolls, income, issues and profits to be had or divided from the same or any part or portion thereof, or from any part or portion of said term or terms, or either thereof; and all right to receive or recover the same; and all railway stations or depots with all the appurtenances necessary or convenient for the sole, complete, and entire use and operation as well as maintenance of said road; and also all the locomotives, engines, tenders, cars, carriages, tools and machinery belonging or appertaining to said railroad or railway; and also all improvements or additions made or to be made to any or all of said properties, estates, railroads or railways and their appurtenances by said party of the first part or by others, and all and every estate, interest, property or thing as well real or mixed as personal, which the said party of the first part own and hold, or may and shall hereafter acquire and hold, necessary or convenient for the use, occupation, operation or enjoyment of all or any of its said railroads, railways, leases and property, rights, privileges and franchises or any part or portion thereof; and also all rights and privileges to use the said road-beds, sidings, tracks, turnouts and switches constructed at the execution of these presents, or which may or shall be hereafter constructed for the convenient use of said railroads or railways or any of them, owned or operated by said first party, as fully and effectually as the said company, party of the first

part, is or may be by law entitled to acquire or have. 193
But nothing shall herein be held, understood or construed to prevent said party of the first part from selling, hypothecating or otherwise disposing of any money or securities received in payment of shares of capital stock, or from proceeds of any debts or claims now due to said company, or from disposing of by and with the consent in writing of the parties of the second part, or successors in the trust, any land or other property and effects not essential or necessary to be retained for the said road-way, depots or station 194
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the bonds hereby secured. But even after default in payment of interest the trustees shall have full power in their discretion, upon the written request of the party of the first part, to convey by way of release or otherwise to the persons designated by the said party of the first part, any lands acquired or held for the purposes of stations, depots, shops or other buildings and no longer required therefor, and shall also have power to convey as aforesaid on like request any bonds or property, which, in the judg- 196
ment of the trustees shall not be necessary for use in connection with said railroad or which may have been held for a supply of fuel, gravel or other material, and also to convey as aforesaid on like request any lands not occupied by the then existing track which may become disused by reason of a change of the location of any station house, de-

pot, shop, or other building connected with the said railroad or any straightening or alteration of the lines of the road, and such land occupied by the track and adjacent to such station-house, depot, shop, or other buildings as the said party of the first part may deem it expedient to disuse or abandon by reason of such change, and consent to any such change and to such other changes in the location of the track, or depot, or other buildings, as shall have become expedient, and to make and deliver the conveyances necessary to carry the same into effect; provided that any lands that may be acquired for permanent use in substitution for any so released shall be conveyed to the trustees upon the trusts of these presents. And the trustees shall also have full power to allow the said party of the first part from time to time to dispose of such portions of the equipments, machinery and improvements at any time held or acquired for the use of said railroad as may have become unfit for such use. To have and to hold the estate, property, rights, privileges, franchises and interests above conveyed or transferred, or intended so to be; together with all and singular the emoluments, income and advantages, tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, the said R. T. Wilson and W. T. Walters, parties of the second part, or the survivor of them, and their successors and assigns, on the trust and for the uses and purposes herein declared, and none other; provided always, that these presents are made and executed upon the express condition that if the said party of the first part shall well and truly pay or cause to be paid to the holders of the said bonds or obligations intended to be secured hereby, and each and every of them, after the same

shall be issued, the principal sums of money therein 201
respectively mentioned, at the maturity thereof, according to their true intent and meaning, with the interest thereon accruing, at the times and in the way and manner therein, and in the coupons provided, according to the true intent and meaning of these presents, that then and thenceforth this indenture and the estate hereby granted shall cease, determine, and be utterly void and of none effect, without any other release or formal reconveyance, re-entry, acknowledgment of satisfaction, or any 202
other act whatsoever.

In case default shall be made in the payment of any half year's interest on any of the bonds aforesaid at the time and in the manner in the coupons issued therewith is provided, the said coupon having been presented and the payment of the interest therein specified having been demanded, and that such default shall continue for the period of six months after the said coupon shall have become due, then and thereupon the principal of all the 203
said bonds shall at the election of the trustees become due and payable, or a majority in interest of the holders of said bonds may by an instrument in writing under their hands and seals instruct the said trustees to declare the principal of said bonds to be due, or waive the right so to declare, on such terms and conditions as such majority in interest shall deem proper, or may annul or reverse the election of the trustees; provided that no action of the trustees or of the bondholders shall extend to 204
or be taken to affect any subsequent default or impair the rights resulting therefrom.

And the said party of the first part, in consideration of the premises, hereby covenants and agrees to and with the said R. T. Wilson and W. T. Walters, and the survivor of them, their successor and successors in the said trust, and assigns, that

the said first party will at any time or times hereafter, upon the reasonable request of the said parties of the second part, their successors or assigns, execute and deliver, or cause to be executed and delivered, all and every such further and other reasonable deeds, conveyances, assignments and assurances in the law for the better and more effectual vesting and confirming the premises, property, rights and interests hereby granted or intended so to be, and especially for conveying any property subsequently to the date hereof, acquired by the said party of the first part and comprehended in the description contained in this indenture, if any such there be, to the said parties of the second part as Trustees for the uses and purposes of this indenture, and to their successors and assigns, as by them or their counsel learned in the law shall be reasonably devised, advised or required.

And first, that the said first party will do and perform all the things on the part of the said first party to be done and performed as hereinbefore set forth, and faithfully apply all the money and other things arising from the issue and sale of said bonds to the purposes hereinbefore recited or mentioned as the objects thereof, and further, that the said first party will pay unto the holder or holders of the said bonds respectively the said principal sums of money therein respectively mentioned and as expressed therein, and the interest thereon as the same shall become due and payable. And it is hereby provided, declared and agreed that no bond shall be deemed to be issued under this mortgage or entitled to the benefit of the security thereby provided unless there shall be endorsed thereon a certificate signed by the Trustees for the time being to the effect that the same is issued under the said mortgage.

And it is hereby further covenanted, de- 209
clared and agreed that in case of default in payment thereof, either principal or interest money secured hereby, and the continuance of such default for six months after such default shall have been made or suffered, the said first party shall and will, on demand made after the expiration of such six months by the parties of the second part, their successors or assigns, trustee or trustees for the time being, or their agent or agents duly authorized in writing, assign and transfer in due form to them, 210
or to their agent or agents so authorized, the actual possession of all the herein-granted and conveyed property and premises, and herein recited and mentioned, or intended to be embraced in this trust; and further, that the expense of taking, holding and managing said property and premises, if possession be taken, shall be paid from the income, and, if necessary, from the sale of the property and premises by the said trustee or trustees, as the case may be, for the time being; and further, that in 211
such case the parties of the second part, or the survivor of them, or their successors in said trusts and assigns, shall and may by themselves, or by their officers and agents, take and receive, collect and have, the income and profits of the said railways and other property, first applying the same to the payment and discharge of all current and necessary operating expenses and repairs, including the expenses hereinbefore mentioned, and all taxes and other similar charges, and next to the 212
payment of all sums of money due and payable upon the aforesaid bonds issued by said first party and hereby secured according to the tenor thereof; and further that the said parties of the second part, their successors in said trust or assigns, having entered as hereinbefore mentioned, into the full possession of the premises, property and estate hereby

the said first party will at any time or times hereafter, upon the reasonable request of the said parties of the second part, their successors or assigns, execute and deliver, or cause to be executed and delivered, all and every such further and other reasonable deeds, conveyances, assignments and assurances in the law for the better and more effectual vesting and confirming the premises, property, rights and interests hereby granted or intended so to be, and especially for conveying any property subsequently to the date hereof, acquired by the said party of the first part and comprehended in the description contained in this indenture, if any such there be, to the said parties of the second part as Trustees for the uses and purposes of this indenture, and to their successors and assigns, as by them or their counsel learned in the law shall be reasonably devised, advised or required.

And first, that the said first party will do and perform all the things on the part of the said first party to be done and performed as hereinbefore set forth, and faithfully apply all the money and other things arising from the issue and sale of said bonds to the purposes hereinbefore recited or mentioned as the objects thereof, and further, that the said first party will pay unto the holder or holders of the said bonds respectively the said principal sums of money therein respectively mentioned and as expressed therein, and the interest thereon as the same shall become due and payable. And it is hereby provided, declared and agreed that no bond shall be deemed to be issued under this mortgage or entitled to the benefit of the security thereby provided unless there shall be endorsed thereon a certificate signed by the Trustees for the time being to the effect that the same is issued under the said mortgage.

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or to their agent or agents so authorized, the actual possession of all the herein-granted and conveyed property and premises, and herein recited and mentioned, or intended to be embraced in this trust; and further, that the expense of taking, holding and managing said property and premises, if possession be taken, shall be paid from the income, and, if necessary, from the sale of the property and premises by the said trustee or trustees, as the case may be, for the time being; and further, that in 211
such case the parties of the second part, or the survivor of them, or their successors in said trusts and assigns, shall and may by themselves, or by their officers and agents, take and receive, collect and have, the income and profits of the said railways and other property, first applying the same to the payment and discharge of all current and necessary operating expenses and repairs, including the expenses hereinbefore mentioned, and all taxes and other similar charges, and next to the 212
payment of all sums of money due and payable upon the aforesaid bonds issued by said first party and hereby secured according to the tenor thereof; and further that the said parties of the second part, their successors in said trust or assigns, having entered as hereinbefore mentioned, into the full possession of the premises, property and estate hereby

conveyed or without having entered into such possession (the said default still continuing), at his or their discretion and with the approbation of such Court or Courts of Record, either State or Federal, as may have jurisdiction over like trusts in the State of Tennessee, may, or on the written request of the holders of at least one half of the bonds hereby secured and then outstanding unpaid shall, proceed to sell and dispose of or cause to be sold and disposed of, all the premises, property, rights, interests, franchises and estate, hereby conveyed or intended to be conveyed, or so much thereof as shall be necessary to pay and discharge the principal and interest according to the tenor thereof, of all such of said bonds hereby secured and then outstanding as may have been issued by said first party together with all benefit and equity of redemption of said party of the first part therein, by public auction, either in the City of Knoxville, Tennessee, or in City of New York, to the highest bidder, having previously given public notice of the time, place and terms of said sale, and of the property to be sold, by publishing the same in at least two newspapers of good general circulation in each of the said cities, and wherever else the Trustees may deem expedient or required by law, for a period of ninety days previous to such sale. And, as the attorney or attorneys of the said first party for that purpose by these presents duly constituted and appointed, make, execute and deliver to the purchaser or purchasers thereof a good and sufficient deed or deeds of conveyance in the law for the same, granting and assuring to the said purchaser or purchasers all such estate, right, property, franchise and interest, and to the same extent as the said first party had therein at the date hereof or at any time subsequent, and also a good and sufficient transfer and assignment of said personal property, choses in action,

contracts and leases. And out of the moneys 217
arising from such sale or sales it shall be lawful for
and the duty of said Trustees, after first retaining
the costs and charges of advertisement and of the
said sale of the premises and all other sums of
money which said Trustees or their successors in
said trust may have been obliged to pay by reason
of their taking possession of and operating said
premises, and a reasonable allowance for their own
services and for legal professional advice, aid and
assistance in effecting and consummating said pos- 218
session, operation and sale. And also to pay, in so far
as such proceeds shall suffice therefor, the principal
and interest whether then due or yet to become due,
which shall then remain unpaid on said bonds re-
maining issued and outstanding and hereby secured
as aforesaid, for the benefit of and to be paid to the
holders thereof and then restore the residue of the
said proceeds, if any there be, to the said party of
the first part; it being hereby expressly understood
that the bonds issued by the said first party and se- 219
cured by these presents shall be rateably receivable,
if desired by the holders thereof, in payment of
said sale by said trustees, or their successors, to the
amount of the net proceeds of such sale properly
applicable to the payment of such bonds respect-
ively; and the said sale when fully consumated,
shall be a perpetual bar, both in law and equity,
against the said party of the first part, and all per-
sons claiming or to claim the premises, or any part
thereof, by, through or under said party of the first 220
part subsequent to the date of these presents; and
in no case shall any claim or advantage be taken
of any valuation, appraisement or extension laws by
the party of the first part nor any injunction or stay
of lawful proceedings hereon, nor shall any process
be applied for or obtained by the party of the first
part to prevent or obstruct such lawful entry or

conveyed or without having entered into such possession (the said default still continuing), at his or their discretion and with the approbation of such Court or Courts of Record, either State or Federal, as may have jurisdiction over like trusts in the State of Tennessee, may, or on the written request of the holders of at least one half of the bonds hereby secured and then outstanding unpaid shall, proceed to sell and dispose of or cause to be sold and disposed of, all the premises, property, rights, interests, franchises and estate, hereby conveyed or intended to be conveyed, or so much thereof as shall be necessary to pay and discharge the principal and interest according to the tenor thereof, of all such of said bonds hereby secured and then outstanding as may have been issued by said first party together with all benefit and equity of redemption of said party of the first part therein, by public auction, either in the City of Knoxville, Tennessee, or in City of New York, to the highest bidder, having previously given public notice of the time, place and terms of said sale, and of the property to be sold, by publishing the same in at least two newspapers of good general circulation in each of the said cities, and wherever else the Trustees may deem expedient or required by law, for a period of ninety days previous to such sale. And, as the attorney or attorneys of the said first party for that purpose by these presents duly constituted and appointed, make, execute and deliver to the purchaser or purchasers thereof a good and sufficient deed or deeds of conveyance in the law for the same, granting and assuring to the said purchaser or purchasers all such estate, right, property, franchise and interest, and to the same extent as the said first party had therein at the date hereof or at any time subsequent, and also a good and sufficient transfer and assignment of said personal property, choses in action,

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said sale of the premises and all other sums of
money which said Trustees or their successors in
said trust may have been obliged to pay by reason
of their taking possession of and operating said
premises, and a reasonable allowance for their own
services and for legal professional advice, aid and
assistance in effecting and consummating said pos- 218
session, operation and sale. And also to pay, in so far
as such proceeds shall suffice therefor, the principal
and interest whether then due or yet to become due,
which shall then remain unpaid on said bonds re-
maining issued and outstanding and hereby secured
as aforesaid, for the benefit of and to be paid to the
holders thereof and then restore the residue of the
said proceeds, if any there be, to the said party of
the first part; it being hereby expressly understood
that the bonds issued by the said first party and se- 219
cured by these presents shall be rateably receivable,
if desired by the holders thereof, in payment of
said sale by said trustees, or their successors, to the
amount of the net proceeds of such sale properly
applicable to the payment of such bonds respect-
ively; and the said sale when fully consumated,
shall be a perpetual bar, both in law and equity,
against the said party of the first part, and all per-
sons claiming or to claim the premises, or any part
thereof, by, through or under said party of the first 220
part subsequent to the date of these presents; and
in no case shall any claim or advantage be taken
of any valuation, appraisement or extension laws by
the party of the first part nor any injunction or stay
of lawful proceedings hereon, nor shall any process
be applied for or obtained by the party of the first
part to prevent or obstruct such lawful entry or

221 sale as aforesaid, but the same are hereby expressly waived by the said party of the first part.

And this indenture further witnesseth that these presents and the said bonds hereby secured or intended so to be, are made, extended and issued or delivered upon the terms, conditions and agreements following, that is to say:

First, that the actual possession, use, management and control of all the hereinbefore granted estate, property and premises shall be and remain
222 in and with the said party of the first part so long as the bonds so issued shall be and remain without forfeiture or default in respect of interest or otherwise.

Second, that in case of any vacancy in the said trusteeship hereunder, by the incapacity to act, death or resignation of either of the said trustees, or from any other cause, all his estate, right, interest, power and control shall be thereupon divested and cease and determine, but without destroying or
223 without any discontinuance of the trust, and the said party of the first part shall, or upon default or omission to take proceedings therefor for thirty days after notice of such vacancy or incapacity, the holders of not less than ten per centum in amount of the said bonds hereby secured, may apply to any of the Courts having jurisdiction in the premises in the State of Tennessee to appoint a new trustee to supply the vacancy, and such proceedings may be had and appointments made as often as the like
224 occasion may require the appointment of a trustee to execute the trust herein declared, and when so appointed such new trustee shall thereupon become vested, for the purposes of said trust, with all the rights, estate, interests, power, property and control hereby conveyed or granted to or vested in the said R. T. Wilson and W. T. Walters by these pre-

sents, without any further assurance, grant or con- 225
veyance of the same, as fully and effectually as if such appointment had been originally made therein. But, if the same shall be necessary, both the said party of the first part and such new trustee, or either of them, shall make, execute and deliver all necessary conveyances and agreements and grants and powers and authorities for that purpose.

And it is further understood and agreed by and between the parties to these presents, that the said parties of the second part, their successor or suc- 226
cessors in said trust, shall only be accountable for reasonable diligence in the management thereof, and shall not be responsible for the acts or negligence of any agent or agents necessarily employed by them, when such agent or agents are selected with proper discretion, or with the approbation of the said party of the first part, and the officers of the said railroad company shall have at all times the right to inspect the books kept by the Receivers of the road and their agents. 227

And this Indenture further witnesseth, that the said parties of the second part hereby accept the aforesaid trusts, and also covenant and agree to and with the said party of the first part to execute the same upon the terms and conditions hereinbefore as well as hereinafter mentioned and provided, and which said terms and conditions are hereby mutually agreed to and upon by both of the parties to these presents, and that the said Trustees and their successors may employ and advise with legal coun- 228
sel, and that the expense thereof, as well as other personal expenses of the said Trustees for the time being in the discharge of said trusts, and all other their reasonable and proper charges and expenses thereof, including their compensation, shall be paid by the parties of the first part as they are incurred, or otherwise, out of the trust estate or income on which or to which they are chargeable; and like-

229 wise that the said Trustees or their successors shall not be required to act in the execution of said trusts, except at their own option, unless the party requesting them so to do shall furnish them reasonable indemnity against the loss, costs, trouble and expense they may incur or be at in so doing; and that when called upon to act they shall be and are hereby authorized and invested with full power at their option, under advice of legal counsel, to submit all questions of law or fact arising in the exe-
230 cution thereof to arbitrators; that they in the execution of said trusts may employ agents and attorneys in fact to act in their behalf whenever requested to act as aforesaid, except when they may be or are required by law to act personally.

And also that all covenants and agreements hereinbefore contained or implied may be executed specifically by and through any of the said Courts of competent jurisdiction as practised by them in like cases of trusts.

231 In testimony whereof the said party of the first part, in pursuance of authority given by law, and in comformity with the order of the Board of Directors has caused this indenture to be signed by C. M. McGhee, its President, and John L. Moses, Treasurer, and the Corporate seal of the Company to be affixed hereto, and the parties of the second part have hereunto subscribed their names and affixed their seals the day and year in this indenture first mentioned.

232 C. M. McGHEE, *President.*
JOHN L. MOSES, *Treasurer.*
R. T. WILSON, W. T. WALTERS } *Trustees.*

Signed, sealed and delivered in presence of
WILLIAM H. CLARKSON, } as to R. T. WILSON and W. T. WALTERS, *Trustees.*

H. W. LYNN, WM. BLAIR, } as to C. M. McGHEE and JOHN L. MOSES.

STATE OF NEW YORK, }
City and County of New York. } ss.:

Personally appeared before me, a Commissioner of the State of Tennessee in and for the State of New York, residing in the City of New York, the foregoing named trustees, Richard T. Wilson and W. T. Walters, with whom I am personally acquainted, who acknowledged that they executed the foregoing Instrument for the purposes therein contained.

In Witness Whereof, I have hereunto set my hand and affixed my official seal this 1st day of March, A. D. 1876.

[L. S.] WILLIAM H. CLARKSON,
Commissioner for Tennessee in New York,
117 Broadway, New York City.

STATE OF TENNESSEE, }
Knox County. }

Personally appeared before me, J. F. J. Lewis, Clerk of the County Court of said County, H. W. Lynn and Wm. Blair, subscribing witnesses to the foregoing instrument, who, having first been sworn, deposed and said they were acquainted with C. M. McGhee, President of the Knoxville & Ohio Railroad Company, who signed the foregoing deed, and that he acknowledged in their presence that the instrument was executed for the purposes therein named; also, at the same time, personally appeared before me, John L. Moses, Treasurer of the Knoxville & Ohio Railroad Company, known to me as the individual named in the foregoing deed, who acknowledged that he signed the same for the purposes therein named, that he affixed the seal of the Knoxville & Ohio Railroad Company, and that his signature as Treasurer, the signature of C. M. McGhee as President, and the seal of the Company were affixed under the authority and direction of an order passed by the Board of Directors of said Company, and that said order was passed in pursuance of a resolution adopted by the stockholders of the Company.

Witness, my hand and official seal, at office in Knoxville, this June 7, 1876.

J. F. J. LEWIS,
[L. S] *Clerk.*

STATE OF TENNESSEE, }
Knox County. }

REGISTER'S OFFICE,
June 7th, 1876, 12 *o'clock M.*

Then was this Deed of Trust registered in my office, in Trust Deed Book "C," vol 1st, pages 358, 359, 360, 361, 362, 363, 364, 365, 366 and 367, and noted in Note Book "A," page 22.

CHARLES MORROW,
Register,
For Knox County, Tennessee.

Fee, $7.25, paid.

STATE OF TENNESSEE, }
Anderson County. }

I, J. A. Brown, Register for said County, do certify that the Deed of Trust and the Certificate attached, was received for Record on the ninth day of June, A. D. 1876, at nine o'clock A. M., and Registered in Book Z, on pages 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, and noted in Note Book No. 2, on page 137.

J. A. BROWN,
Register,
For Anderson County, Tennessee,
By JOHN ALLEN,
Dep't. Register,
For said County.

Fee, $7.50, paid.

STATE OF TENNESSEE, }
Campbell County. }

REGISTER'S OFFICE,
Jacksonboro, Tenn., June 14th, 1876.

The foregoing instrument with Certificates attached came to hand June 14th, 1876, at 9 o'clock A. M., was noted in Note Book, vol. "1," page 101, and recorded in Book of Trust Deeds, vol. "A," pages 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281 and 282, June 15th, 1876, at 3 o'clock P. M.

D. C. MCAMIS,
Register,
For Campbell County, Tennessee.

Reg. fees, $7.75, paid.

RESPONDENT'S EXHIBIT No. 3. 233

W. H. D. L., *Spl. Exr.*

Statement showing the Railroads which retired their debts to the State of Tennessee, and amount of same, date, &c.:

Names of Railroad.	Original Debt.	Date of payment	How Paid.		
			Bonds.	Coupons.	Cash.
East Tenn., Va. & Ga.,....	3,816,000 00	Aug. 1,1870	3,835,000 00	282,750 00	11 10
Memphis & Charleston, ...	1,700,000 00	July 25, '77	1,648,000 00	88,920 00	
Nashville & Chattanooga....	395,000 00	Jan. 1, '74	364,165 00		
Nashville & Decatur, ...	2,119,000 00	M'ch, 1871	2,393,750 00	407,005 00	32 10 234
Memphis & Ohio, ...	1,999,000 00	May 25, '71	2,146,000 00	322,380 00	
Mobile & Ohio,.....	1,296,000 00	Jan. 1, '72	1,539,000 00	246,245 00	1 00
Mississippi & Tennessee....	398,000 00	Jan. 16, '78	299,000 00	810 00	
Mississippi Central, ...	1,124,000 00	Nov. 28.'77	1,199,000 00		

Statement showing amount of Sinking Fund paid by Railroads since January, 1870:

Name of Railroad.	Bonds.	Coupons.	Currency.	Total.	
Memphis & Charleston, ...	158,000 00	34,465	6 20	198,585 00	235
Nashville & Chattanooga, ...	20,500 00	10,835		31,335 00	
Mississippi & Tennessee,....	115,000 00	2,536		117,536 00	

What Railroads were sold, the amount for which each was sold payable in bonds of the State, with *January*, 1871, *and subsequent coupons* attached (or equivalent) and the amount of bonds, &c., actually paid:

Name of Railroad,	Amount of Sale.	How Paid.			
		Bonds.	Coupons.	Cash.	
Edgefield and Kentucky,....	900,000 00	974,000 00		10,443 96	236
Cin.,Cumb. Gap & Charleston	300,000 00	300,000 00			
Knoxville & Kentucky,.....	350,000 00	343,000 00	7,500 00	20 67	
McMinnville & Manchester,.	300,000 00	300,000 00			
Winchester & Alabama,.....	300,000 00	300,000 00			
Rogersville & Jefferson,.....	23,000 00	23,000 00			
Nashville & North-Western,.	2,400,000 00	2,400,000 00			
Knoxville & Charleston,.....	105,000 00	117,000 00	7,950 00	6,791 25	
E. Tenn. & West. N. Carolina,	20,000 00	21,000 00	50 00	180 00	
Mem.,Clarksville & Lou'ville,	1,700,000 00	1,630,000 00	70,000 00		
Tenn. & Pacific,:.....	300,000 00	328,000 00		*10,470 00	

* In litigation.

237 Statement showing the date of first and last payments on account of the roads which were sold out:

Name of Railroad.	Date of first payment.	Date of last payment.
Edgefield & Kentucky, ...	Aug. 26, 1871.	Dec. 23, 1874.
Cin.,Cumb. Gap & Charleston	Oct. 16, 1871.	Sept. 24, 1874.
Tenn. & Pacific, ...	Aug. 8, 1874.	Nov. 29, 1876.
Nashville & North-Western,.	Oct. 10, 1871.	Jan. 1, 1874.
Winchester & Alabama,.....	Aug. 30, 1871.	Dec. 20, 1873.
McMinnville & Manchester,.	April 6, 1870.	July 27, 1870.
Knoxville & Kentucky,.....	Oct. 16, 1871.	Sept. 24, 1874.
Rogersville & Jefferson,.....	April 10, 1872.	April 10, 1872.
238 Knoxville & Charleston,....	April 20, 1872.	Dec. 1, 1878.
E. Tenn. & West. N.Carolina	Nov. 18, 1871.	Nov. 13, 1874.
Mem.,Clarksville & Louisville	March 2, 1871.	May 7, 1872.

RESUME.

Paid in Bonds,.....	13,423,915 00	
" " "	293,500 00	
" " "	6,736,000 00	
		20,453,415 00
" " Coupons	1,348,120 00	
" " "	47,836 00	
" " "	85,500 00	
239		1,481,456 00
" " Cash	44 20	
" " "	6 20	
" " "	27,905 88	
		27,956 28
		21,962,827 28
Debt paid,.		14,772,079 20
Sinking Fund,.....		341,342 20
Roads sold,.....		6,849,405 88
Add, ...		21,962,827 28
Louisville & Nashville Railroad Co.,.....		702,000 00
240		
Paid in 1865–6, ...		22,664,827 28

STATE OF TENNESSEE,
Comptroller's Office.

I, JAS. L. GAINES, Comptroller of the State of Tennessee, do certify that the foregoing statements (on the opposite page) are correct as shown by the books and records of this office.

Witness, etc., this 21st day of October, 1879.

[SEAL.] JAS. L. GAINES,
Comptr.

COMPAINANT'S EXHIBIT No. 1. 241
W. H. D. L., Sp'l Ex.

MOBILE & OHIO

RAILROAD COMPANY.

FIRST MORTGAGE

Seven per Cent. Sinking Fund 242

GOLD BONDS.

$1,000 or £205.

Principal Due, July 1st, 1901.

243

Interest Payable January 1st and July 1st.

Principal and Interest Payable in the City of New York, Coin of the United States of America, or in the City of London, in Sterling, at the Option of the Holder.

RESOLUTIONS 244

OF

Mobile and Ohio Railroad Company.

AT a called meeting of the Board of Directors of the Mobile and Ohio Railroad Company, held 25th

245 May, 1871, the following preamble and resolutions were unanimously adopted :

Whereas, At sundry times, heretofore, to enable this Corporation to iron, equip and complete its line of railway through the State of Tennessee, said State of Tennessee, under and by virtue of its general Internal Improvement Laws, and of other acts amendatory and supplementary thereto, theretofore passed, and then in full force, loaned to this Company, or has advanced for its benefit, bonds of
246 the said State of Tennessee, to the aggregate sum of one million six hundred and eighty-four thousand eight hundred dollars ($1,684,800).

Whereof payment, both of principal and accruing interest, was to be made by this Company, as the same matured, and for the security of which payments of principal and interest, a lien was reserved to said State upon the entire road in the State of Tennessee, including the right of way, grading, bridges, masonry, iron rails, spikes, chairs,
247 and the whole superstructure and equipments, and all the property owned by the Company, as incident to, or necessary for its business; and all depots and depot stations, and all the property and assets attached thereto, or belonging to said Company, lying within the limits of said State, with power to seize, and in default of payment of the principal, to sell in the nature of a mortgage lien, as appears by reference to the said statutes of the State of Tennessee.

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And whereas, By Act of the said State of Tennessee, Chapter XXXVIII, passed at the second session of the thirty-fifth General Assembly of the State, entitled, "An Act to liquidate the State Debt contracted in aid of railroad companies in the State of Tennessee," passed Febuary 25th, 1869, it is among other things enacted, that any person

or corporation may, with the consent of the Board 249
of Directors of any railroad company, so having received aid under said General Internal Improvement Law, passed 11th Febuary, 1852, and the amendments thereto, pay off the indebtedness of such railroad company to the said State, in the mode and manner therein provided, and with the consent of such railroad company upon such payment be subrogated to all the lien or liens, which the State of Tennessee had, or has, upon said railroad, or its property, and have the same right to 250
enforce the same, which the State of Tennessee had.

And whereas, This Corporation is desirous to avail itself of the provisions of said law, and return to said State of Tennessee the like amount of bonds of said State, as have heretofore been loaned to it, or advanced for its benefits by an issue of its own bonds, to be exchanged for said State bonds, with the holders thereof, and at the same time to secure to the holders of said substituted bonds in good 251
faith all the protection and security which the said State of Tennessee held for its protection and indemnity against loss and damage, by reason of its said loan to the said Mobile and Ohio Railroad Company, by virtue of the laws of the said State, were no change made in the form of security originally held by said State, according to the true intent and meaning of the Act passed 25th February, 1869.

Therefore be it resolved by the Board of Directors 252
of the Mobile and Ohio Railroad Company as follows:

1st.—The President of this Company is hereby authorized and empowered to cause to be prepared and issued, under the seal of this Company, bonds of this Company to the amount of one million six

253 hundred and eighty-five thousand dollars ($1,685,-
000), the same to be signed by the President, or in
his absence, by one of the Vice-Presidents, and
countersigned by the Secretary and Treasurer, said
bonds to be made payable in Gold coin of the Uni-
ted States, in the City of New York, or in the City
of London, at the option of the holder; to be each
for the sum of one thousand dollars, or two hun-
dred and five Pounds Sterling, and payable on the
1st day of July, A. D. 1901. Said bonds to bear
254 interest at seven per centum per annum, payable
semi-annually, on 1st January and July in each
year, at New York or London, at the option of the
holder, and for which interest, coupons or interest
warrants are to be attached to said bonds.

2d.—That Wm. Butler Duncan, Adrian Iselin
and Richard T. Wilson, their survivors and survi-
vor, are hereby declared the Agents of this Com-
pany, to effect the substitution of its said bonds, as
255 above authorized, in place of the said bonds of the
State of Tennessee, for the purpose and objects de-
clared in the preamble to these resolutions; and
upon and from and after such substitution, as rap-
idly as the same is effected, the said Wm. Butler
Duncan, Adrian Iselin, and Richard T. Wilson,
their survivors and survivor, and their successors,
are hereby declared to be Trustees for the mutual
benefit of this Company, and of the holders of said
bonds, and are hereby authorized to defend and
256 protect the rights conferred on the holders of said
bonds, by the said acts and laws of the said State of
Tennessee, and hereby acknowledged and recog-
nized. In case of the death or resignation of any of
said Trustees, the vacancy shall be filled by the
joint appointment of the remaining Trustees, or
Trustee, and the President of the Mobile and Ohio
Railroad Company, with the approval of its Board

of Directors; and if all become incapable of acting, 257
new Trustees are to be appointed by this Company.

3d.—This Company does hereby declare that it does and will at all times acknowledge and recognize the bonds herein authorized to be issued, when so substituted in the room and place of the said bonds of the State of Tennessee, in manner herein and by said act provided, as entitled to and in fact being a lien, in the nature of a first mortgage, upon all the property of this Company, in the said State, 258
the same precisely as is now declared to exist in favor of the said State of Tennessee, under and by virtue of the statutes thereof, in pursuance of which the said loan and advance of State bonds was made to the Company.

And this Company does hereby covenant to and with the said Trustees, their survivors and survivor, and successors, that it will in good faith do and perform all things, acts and deeds necessary and proper, and which it may be reasonably requested 259
to do, for the protection of the rights of the holders of said substituted bonds, and of said Trustees for their benefit, according to the true intent and meaning of the said acts and laws of the State of Tennessee, hereinbefore referred to, and of these resolutions; and further, that this Company shall and will, annually hereafter, from and after the 1st day of April, 1873, within three months thereafter, and during each year, while said bonds, herein authorized, are running to maturity, provide and set 260
apart from the earnings of the Company a fund of at least one per centum of the amount of said bonds, and will annually faithfully apply said sum of money, so set apart, as a sinking fund to the purchase and gradual retirement of said bonds; and on, or by the 1st day of April, 1874, and every year thereafter, till said bonds are fully retired, will

furnish to said Trustees, evidence of the performance of this stipulation, as may be agreed on.

Resolved, That the President of this Company be, and he is hereby directed, under its corporate seal, to execute and deliver to said Wm. Butler Duncan, Adrian Iselin and Richard T. Wilson, as Trustees aforesaid, its deed for the uses and purposes herein declared, and for the effectual protection and security of the holders of the bonds, hereby authorized to be issued, according to the true intent and meaning of these resolutions.

I certify the foregoing to be a true copy from the minutes of the Board of Directors of the Mobile and Ohio Railroad Company.

Seal of Company.

(Signed,) A. L. WILLOUGHBY,
Sec'y M. & O. R. R. Co.

DEED OF TRUST

OF

MOBILE AND OHIO RAILROAD CO.

This indenture, made this first day of July, A. D. 1871, between the Mobile and Ohio Railroad Company, of the first part, Wm. Butler Duncan, Adrian Iselin and Richard T. Wilson, of the City and State of New York, their survivors and survivor, and successors, of the second part, and the holders of the bonds issued by said party of the first part, and herein described, of the third part.

Witnesseth, that whereas, under the General Internal Improvement Laws of the State of Tennessee, passed 11th February, 1852, and the acts amendatory thereto, the party of the first part has become liable to the State of Tennessee in the sum of one million

six hundred and eighty-four thousand eight hun- 265
dred dollars, being the amount of bonds of said State loaned to said party of the first part, and moreover is under obligation to pay to the State of Tennessee semi-annually an amount equal to the amount of the same annual interest upon the said bonds so loaned, as well as an amount of money equal to the principal of said bonds, so loaned to the party of the first part, when and as the same become due and payable; and whereas, by Act of the said State of Tennessee, entitled, "An Act to 266
liquidate the State debt contracted in aid of Railroad Companies in the State of Tennessee," passed February 25th, 1869, the Railroad Companies, so receiving aid from the State, of which the party of the first part was one, are authorized to issue their own bonds to an amount equal to the bonds so received from said State, and are authorized so to use said bonds as to retire and return to said State, bonds of said State of Tennessee to an amount equal to that loaned to said company, or advanced 267
for its benefit, for the security of which new issue of bonds, the holders thereof, it is by said act declared, shall, with the consent of such railroad company, be entitled to all the lien, rights and privileges reserved to the said State for its own security and protection.

And whereas, The party of the first part has accepted the terms and provisions of said Act, and has for the purpose aforesaid caused to be issued its bonds, dated 1st July, 1871, to the extent of one 268
million six hundred and eighty-five thousand dollars, and numbered from one to sixteen hundred and eighty-five (1685), inclusive, each for one thousand dollars, payable in gold coin of the United States, at New York, or two hundred and five pounds sterling, payable in London, at the option of the holder, with interest at seven per centum per

annum, payable semi-annually, in gold coin at New York, or in sterling at London, as aforesaid, at the option of the holder, for which interest coupons or warrants, payable as aforesaid, are attached to said bonds; and has delivered said bonds with the said coupons attached, to Wm. Butler Duncan, and Adrian Iselin and Richard T. Wilson, as agents of the party of the first part, to be substituted in place of the claim and demand and liability now held against the party of the first part by the said State of Tennessee, for which purpose of substitution the said Wm. Butler Duncan, Adrian Iselin, and Richard T. Wilson, are hereby made and appointed the agents of the said party of the first part, and which substitution under said agency, said parties of the second part are proceeding to make and perfect.

And whereas, under the laws of the said State of Tennessee, the said State has a lien upon the following named property of this company, to-wit: The entire road in the State of Tennessee, including the right of way, grading, bridges, masonry, iron rails, spikes, chairs, and the whole superstructure and equipments, and all the property owned by the company as incident to or necessary for its business, and all depot stations, and all the property and assets attached thereto, or belonging to said company, within the State of Tennessee, which under the said Act of 1869 upon the return of said State bonds to the said State of Tennessee by any person or corporation, with the consent of such indebted railroad corporation, shall enure to the benefit and for the security of the person or corporation so paying off the said indebtedness or liability of such corporation to the State, or returning to it its said bonds.

Now then, know all men by these presents, that in consideration of the premises, and of the sum of five dollars to said party of the first part, paid by

the said parties of the second part, and to make 273
good and secure the rights of the holders of the said
bonds herein described and now issued by the party
of the first part, and who are in fact the payers of
the said indebtedness of the said party of the first
part to the State of Tennessee, within the meaning
of said Act of February 25th, 1869, and to the ex-
tent thereby authorized, the said party of the first
part doth hereby consent that the said parties of
the second part shall pay and satisfy to the said
State of Tennessee the debt and liability due by the 274
said party of the first part to the said State, and
doth hereby approve such payment, and doth also
hereby consent that upon the payment aforesaid
being made, or to the extent that it shall be made,
and as it is, or may be from time to time made, said
parties of the second part shall, in pursuance of the
terms and provisions of the Act last above herein
referred to, be vested with, and shall have and hold
all the lien or liens which the State of Tennessee had
or has upon the property of the said party of the 275
first part hereinbefore described, in the State of
Tennessee, and shall have the same right to enforce
the same which the State of Tennessee had, and
that said parties of the second part shall be, and are
hereby placed in the same position and with the same
rights which the State of Tennessee had previous to
and before the said payment, and with full power
to enforce the same. To have and to hold the
rights, powers and privileges hereby consented to,
and which arise under the said Act of the State of 276
Tennessee with the consent and approval of the
said Mobile and Ohio Railroad Company to them,
the said parties of the second part, their survivors
and survivor, and their successors, upon trust, how-
ever, for the use, benefit, advantage and security of
the holders of the bonds, herein described, issued
by the said Mobile and Ohio Railroad Company,

277 parties of the third part, to these presents and their assigns, and it is hereby declared, that in case of the death or resignation of the said parties of the second part, the said party of the first part shall appoint new Trustees in their place and stead; and in case any one or two of said Trustees die or resign, such vacancy shall be filled by the joint appointments of the remaining Trustee, or Trustees, and the President of the Mobile and Ohio Railroad Company, with the approval of the Board of Direc-
278 tors thereof. And the said party of the first part doth agree and covenant to and with the said parties of the second part, their survivors and survivor, and their successors, that it, the said party of the first part, will in good faith and at all times hereafter do and perform all things necessary and proper for the protection and security of the said parties of the third part, and of the said parties of the second part, and their assigns, as the same may be reasonably required of it, to make good and ef-
279 fectual this lien and security of said parties, about the payment of their said debts and demands, and to secure the enforcement of their remedies for the payment of said bonds and the interest accruing thereon, in case default be made in the payment of said bonds and coupons, or any part or portion thereof, or default be made in the performance of the covenant herein contained, providing for the creation and application of a sinking fund for the gradual retirement of the bonds herein described,
280 according to true intent and meaning of these presents, and of the said acts hereinbefore referred to, of the General Assembly of the State of Tennessee. And the said party of the first part doth further covenant to and with the said parties of the second part, and of the third part hereto, and their assigns, that on the first day of April, 1873, and on the first day of April of each year thereafter, said party of the first part will from the net earnings of

said Road set aside an amount equal to one per 281
centum of the amount of bonds issued and outstanding under the provisions thereof, as a Sinking Fund for the redemption of the bonds secured by these presents, and that it will invest said Sinking Fund, and the interest accruing thereon, in the purchase of the bonds herein secured, at a rate not exceeding Ten per centum above par, and accrued interest; the bonds so purchased shall be immediately registered, stamped and endorsed, as irrevocably belonging to said Sinking Fund, and not 282
farther transferable, and said bonds and coupons so purchased and assigned to the Sinking Fund by such registration, stamping and endorsement, shall be ever void and cancelled for all other purposes. In case bonds hereby secured cannot be purchased at or under the rate above named, within three months after the setting apart of such money for account of said Sinking Fund, then such other good securities as may be agreed on by the parties of the first and second part shall be purchased and 283
assigned to said Sinking Fund, and all such securities shall be placed with such Depository and in such manner as said parties of the first and second part may from time to time agree upon; and the interest accruing upon said Sinking Fund shall be collected by the party of the first part, and invested as herein provided; and all securities assigned to or purchased for said Sinking Fund shall be, and hereby are, irrevocably pledged for the security and ultimate redemption of the principal and inte- 284
rest of the bonds hereinbefore described and issued by the said party of the first part for the uses and purposes herein declared. And the said parties of the second part are hereby released from executing the bond required of Trustees under Section 1974 of the Code of Tennessee. And the said parties of the second part do hereby accept the Agency and Trusts herein and hereby imposed upon

285 them, and do promise and agree faithfully and to the best of their ability to perform the duties hereby provided to be done and performed by them.

It is understood that the acts of any two of the said Trustees hereunder shall be valid and effectual in the performance of the duties hereby declared, the same as if all had joined therein; that said Trustees may in all cases act by an agent duly appointed over their hand and seal, except in such matters as are by law required to be performed in
286 their proper person; that they shall be fully indemnified and repaid by the party of the first part, including a reasonable compensation, or out of the Trust Funds which may come into their hands, for their reasonable cash fees and expenses by them incurred about the performance of the acts and things herein and hereby required of them; and shall not be required to act in the execution of the trust herein declared, except at their own option, unless the party or parties requesting them so to
287 proceed shall furnish them reasonable indemnity against the loss, costs, trouble and expense they may incur or be at in so doing.

In testimony whereof, the said party of the first part has hereto set its Corporate Seal and the hand of its President, by authority of a resolution of its Board of Directors duly given. And the said parties of the second part have hereunto set their
288 hands and seals.

SEAL OF COMPANY.

(Signed) ABRAHAM MURDOCK,
Pres't Mobile & Ohio Railroad Co.
W. BUTLER DUNCAN, [L. S.]
ADRIAN ISELIN, [L. S.]
R. T. WILSON, [L. S.]

Attest:

A. L. WILLOUGHBY,
Sec'y & Treas'r M. & O. R. R. Co.

STATE OF NEW YORK, } ss.: 289
City and County of New York, }

On this seventh day of August, in the year of our Lord one thousand eight hundred and seventy-one, in the city of New York and State of New York, personally appeared before me, the undersigned, Geo. W. Colles, a Commissioner of Deeds for the State of Tennessee, resident in New York City, the within-named Abraham Murdock, President of the Mobile and Ohio Railroad Company, one of the within-named bargainers, with whom I am personally acquainted, and who, being first duly sworn, 290 deposes and says that he is President of the Mobile and Ohio Railroad Company, and is acquainted with its corporate seal; that the seal purporting to be such, above affixed, is such corporate seal, and was duly affixed to the within instrument by him, the said President; and also he, the said President, set his hand thereto, both by authority of a resolution of the Board of Directors of said Company, duly given. And also then and there personally appeared 291 William Butler Duncan, Adrian Iselin and Richard T. Wilson, others of the within-named bargainers, before me, with each of whom I am personally acquainted, and who each acknowledged that he had executed the within instrument for the purposes therein contained.

Witness my hand and seal, the day and year first above written.

{ COMMISSIONER'S SEAL. } 292

(Signed) GEORGE W. COLLES,
Commissioner for Tennessee in New York.

1

Deposition of John S. Claybrooke.

Middle District of Tennessee:

Be it remembered, that on the 23d day of September, 1879, before me, as Examiner appointed by the Circuit Court of the United States for said district, at my office, in the City of Nashville, Tennessee, was produced and came before me John S. Claybrooke, witness on behalf of the defendants, to 2
depose in civil causes depending in the Circuit Court of the United States for the Eastern District of Tennessee, wherein C. A. Stevens is complainant, and the Cincinnati, Cumberland Gap & Charleston R. R. Co., *et al.*, are defendants; same, complainant, and the Knoxville & Kentucky R. R. Co., *et al.*, are defendants; and the same, complainant, and the East Tennessee & Ga. R. R. Co. are defendants (3 cases).

And the said witness, being of lawful age and sound mind, and being by me first duly cautioned and sworn, deposed as follows. Said deposition 3
was taken by consent of counsel for the complainants and the defendants, and in their presence, and by me reduced to writing in their presence, and in the presence of the witness.

Said JOHN S. CLAYBROOKE, being sworn, deposes as follows:

I was president of the Tennessee & Alabama Railroad from 1852 to 1857, and then from 1859 to 1866; during the first period of my presidency, in June or 4
July, 1854, my company received by me from the State of Tennessee 300 bonds of the State, as a loan

5 to the company, under the Act of February 11, 1852, and the amendments thereto, each bond for $1,000, with coupons for the semi-annual interest attached thereto.

These bonds were sold by an agent of the company in New York, under my instructions, and were sold at par, and the proceeds were used in strict accordance with the requirements of the Statute.

I sold some of the bonds issued to my company
6 by the State to Mr. Carter, and also to the Bank of Tennessee, at par. I never instructed or represented to the agent who sold these bonds in New York that there was any lien on the property of the railroad company in favor of the holders of the bonds, but I instructed him to sell them, and the bonds I also sold. I sold them as straight Tennessee bonds. I hereto attach my report of 1855 to the stockholders of my company of the financial operations of 1854 as "Exhibit A" to this, my deposition, and
7 adopt its statements as true.

I am acquainted with the methods of making the semi-annual interest payments on the amount of bonds loaned to us by the State.

We paid in money into the Treasury of the State or the Bank of Tennessee the amount of interest due from us to the State, and we never were required or attempted to adopt any system whereby to secure the applications of these payments to the coupons attached to the bonds loaned to our com-
8 pany.

But whenever we retained bonds issued to us by the State beyond the time when the coupons fell due, we paid this over-due interest by clipping off the coupons and returning them to the State. These were the only instances that we ever attempted to pay the identical coupons of the bonds issued to our company.

I know that we did pay our sinking fund before 9
the war, and we paid it in other bonds than those issued to us, and we never attempted to pay in the identical bonds issued to us by the State; there was no such requirement. We kept a description of the bonds which we paid into the sinking fund, but we did not keep the numbers of the bonds issued to us. We never adopted any system to classify or identify the bonds issued to us by the State for any purpose.

During the time I was president, although we did 10
not pay our interest during the war, no holder of the bonds issued to us ever presented an over-due coupon on any of such bonds to me, or any other agent of the company, and demanded payment of the same.

On *cross-examination*, the witness testified:

That the receipt he gave did contain the numbers of the bonds issued to him, a copy of which is hereto attached and marked as "Exhibit B." 11

I live near Triune, Williamson County. I am not a stockholder in the Decatur Railroad Company. I am not a director of the road, but was a director up to 1870, or until it was leased to the Louisville & Nashville Railroad Co.

I never made any payments of interest on the State bonds myself. They were made by the treasurer, Frank Hardeman. They were paid into the Bank of Tennessee is my recollection. I expect 12
that the treasurer's books are in the hands of Seay.

Whenever the treasurer of our company notified me that the interest was about due I raised the money. Sometimes had to borrow it.

Of all the bonds issued by the State to the Tennessee & Alabama Railroad Company, I sold myself the following amounts: I sold about twenty thousand dollars of said bonds to the Bank of Ten-

13 nessee, at Nashville, and about twenty-five thousand dollars of said bonds to Daniel F. Carter, a citizen and resident of Nashville, Tenn. These are all of the said bonds I sold myself. These were the only sale of said bonds made in Tennessee that I know of. The rest of the bonds were deposited in the Manhattan Bank, in New York. Mr. Morrison, the cashier of the Manhattan Bank, acted as agent of my company in disposing of the bonds deposited in said bank. I do not know that he made any
14 representations concerning the bonds deposited in said bank. One hundred and forty-three of the 300 bonds issued by the State to the Tennessee & Alabama R. R. Co., as stated as above, were reserved by the company to pay a debt due Thompson & Forman for iron rails, manufactured and sold by them to the company. Said firm was doing business in England; and 140 of the 143 bonds were paid to said firm in satisfaction of their debt, at par, some time in 1855. On the bonds so held by the company
15 and not disposed of immediately, the interest was paid by cutting the coupons from each bond fifteen days before said coupons were due. They were cut off by me and handed to our treasurer, who paid them into the Bank of Tennessee.

I was appointed by the Governor as agent for the State in disposing of the bonds issued by the State to the Tennessee & Alabama Railroad Company, but never acted as such agent.

In January, 1855, there was a meeting held in the
16 City of Nashville, of presidents and other officers of the railroad companies in Tennessee, and of companies whose roads lay partly in Tennessee and partly in adjoining States, which were entitled to receive Tennessee State bonds under the Internal Improvement laws of the State.

In this meeting it was determined to appoint three gentlemen, who were to act as agents of the

railroad companies entitled to receive Tennessee 17
State bonds under the Internal Improvement Acts. The gentlemen so designated were myself, Campbell Wallace, then President of the East Tennessee & Georgia Railroad Company, and Sidney Smith, President of the Mobile & Ohio Railroad Company.

These last mentioned gentlemen were also to be appointed and commissioned by the Governor of the State as State agents to dispose of the State bonds under the provisions of the Internal Improvement Acts. I know that the Tennessee & Alabama Rail- 18
road Company ratified the selection of these gentlemen for the above purpose, and gave them a written power of attorney to act as agents for said company, in disposing of said bonds. And I am satisfied that the majority of the railroad companies in the State also ratified said arrangement and appointed said gentlemen as their agents.

The Governor of the State afterwards appointed and commissioned these three gentlemen as State agents, in accordance with arrangement made at 19
Nashville. Mr. Wallace declined to act as agent under either appointment, but Mr. Smith and I did accept the appointments. It was our intention to go to Europe to carry out the objects of our appointment.

Mr. Smith did go to England. I went to New York with the intention of joining him in England, but found it impossible to leave home, and therefore the scheme fell through entirely, and no action 20
was taken in the matter.

Sidney Smith is dead, and Campbell Wallace now lives in Atlanta, Georgia, as I am informed.

Frank Hardeman, the former treasurer of the Tennessee and Alabama Railroad Company is dead.

In the report made by me as president of the Tennessee & Alabama Railroad Company in 1856

21 to the stockholders, the following language was used by me:

"In addition to the reasons above suggested in de-
"laying and not pushing forward the enterprise as
"rapidly as we would desire, we might mention
"the great stringency which has prevailed for sev-
"eral years in the monetary affairs of the country,
"which has been especially so in regard to foreign
"capital, upon which we are more or less depend-
22 "ent in finding sale for State bonds and other rail-
"road securities."

Also, on page 10 of the same report, the following language is used:

"The war between Prussia and Allied Powers of
"England and France having ceased, and peace be-
"ing restored, we may look forward as a conse-
"quence to a healthier condition of monetary af-
"fairs, and a larger amount of foreign capital seek-
23 "ing investment in American securities, and there-
"by we will meet with a more ready sale for State
"bonds, and other railroad securities."

In the report of Frank Hardeman, treasurer of the Tennessee and Alabama Railroad Company, to the stockholders, dated August 6th, 1855, under the head of disbursements is the following item:

"State Coupons ..... $4,770 00"

24 In the treasurer's report dated July 26th, 1856, under the head of "Disbursements" is the following item:

"State Bond Interest..... ..... $22,972 50"
"Davidson Bonds..... ..... 549 48"

The county of Davidson took stock in the Tennessee and Alabama Railroad Company to the

amount of $200,000.00, for which the county issued its bonds, payable to and endorsed by the railroad company, upon which bonds the railroad company was liable for the payment of the principal and interest, on failure of Davidson County to pay at maturity, and upon notice to the company. 25

We never received any such notice.

In the report of said treasurer of the company to the stockholders dated July 31st, 1857, under the head of

"TREASURER. 26

" Dr.	Cr.
" By Cash, Davidson Bonds,	$ 918 50
" " State Bonds....	18,180 00

During the year 1856, the Tennessee and Alabama Railroad Company issued about $200,000 of its own bonds, with coupons attached for interest, to secure which the income of the road was pledged, after paying all expenses and prior incumbrances."

In the treasurer's report to the stockholders dated June 30th, 1858, under the head of "Disbursements" are the following items: 27

" Cash paid State Coupons.....	$20,758 50
" Company "	1,645 41

Below this table are the following items:

" Bonded Debt—State Bonds.....	$771,000 00
" Company "	46,000 00

When the 43 State bonds now due to the company, but not issued, are received, the bonded debt will be as follows: 28

State Bonds received.....	$771,000 00
" " not "	43,000 00
Company Bonds.....	46,000 00
	$860,000 00

29 In the President's report to the stockholders in 1859 is the following:

"BONDED DEBT.

"Tennessee 6 per cent. Coupon Bonds,	$846,000.00
"Tennessee and Alabama Railroad "Bonds endorsed by the State.	14,000.00
Total	$860,000.00

30 In the Treasurer's report of 1860 is the following:

" *Dr.*	TREASURER.	*Cr.*
"	State Coupons	$51,300.12
"	Coupon Co. Bonds	424.29."

The Tennessee and Alabama Railroad was finished during the year 1860.

The first payment made by the Tennessee and Alabama Railroad Company on its Sinking Fund
31 account was in 1859, at which time it paid $6,000 to the Sinking Fund Commissioners. The reports of the treasurer of the company show that no payment by said company on the Sinking Fund account due on the 1st of January, 1860.

The treasurer's report of the Tennessee and Alabama Railroad Company, made in June, 1861, for the twelve months previous contains the following:

" STATEMENT.

32 "Of the Treasury of the East Tennessee and Ala-
"bama Railroad Company for the year ending June
"30th, 1861.

" *Dr.*	TREASURER.	*Cr.*
By cash Sinking Fund		$3,600.00

There were no reports made by the President or

other officers of the company after 1861, until after 33
the war. The above amounts of $6,000 and $3,600
are the only payments shown by the reports of the
treasurer of the company to have been made by
said company on the Sinking Fund account.

I make this last statement from an examination
of the reports of treasurer from the year 1853 up to
and including the report for the year ending June
30th, 1861, with the exception of the report of 1854,
which I have not examined, but the report of 1862,
which is not before me, may include all the Sinking 34
Fund due the State anterior to that period.

In the treasurer's report, dated August 6th, 1866,
here exhibited to me is the following:

"In March, 1863, the safes of the company were
broken open and some of the books and papers mu-
tilated and destroyed; the loss to the company
by the books and papers and notes will be
inconsiderable, as they can be restored by dili-
gence and labor in time for the purpose of the 35
company; a small amount of money and two (2)
bonds, one State and one Davidson County bond, and
some loose coupons were also taken from the safes.
The numbers were also lost so, that there are no
chances to recover these." The numbers were lost
with the bonds and coupons themselves.

I don't suppose that he kept any account of the
numbers; I certainly never instructed him to do so.
R. H. Bradley, Secretary of the Tennessee & Ala-
bama Railroad Company for some years before the 36
war, is now living at Franklin, Tennessee.

Re-examination:

The bonds that were loaned to my company by
the State were payable to bearer, and were not
marked or endorsed in my name nor in the name of
my company so as to indicate that they had been

37 loaned to the company, but they were issued and passed to us as bank notes are. Many of the bonds issued to us we did not sell immediately, but retained them longer than the period of the falling due of the first coupons.

The witness being asked the following question: "Whether the language quoted in your answer to "cross examination from your report of 1856, and "which language is as follows; 'State bonds "'and other railroad securities.' Now, did you
38 "mean by this expression to designate or charac- "terize State bonds as railroad securities?"

(Complainant by counsel excepts to the foregoing question, because it seeks to elicit from the witness an answer which will attempt to construe the language used. This is a matter for the Court and not the witness.
S. Watson, sol'r for compl't.)

The witness answers as follows: I meant to des-
39 ignate the State bonds as entirely distinct and different from the railroad securities, by which latter term I meant to include the company bonds and Davidson County bonds that were a subscription to the road.

I am neither a stockholder nor director in the Tennessee and Alabama Railroad Company, but I am an original stockholder and holder of 10 shares in the Nashville & Chattanooga Railroad Company. I understand the 10 shares have been multiplied.

40 The items quoted in the cross-examination from the Trustees' report of 1865, under the head of "Disbursements," as follows:

State coupons ..... $4,770.00.

I do not know what it means, unless that it designates the amount of the interest paid to the State. I know that we never did pay the coupons attached

to the identical bonds issued to us, except in the in- 41
stances I have already mentioned, where we held the bonds past the time or to the time when a coupon fell due; then we clipped them off and paid them to the Bank of Tennessee on account of our interest. I know that I did not, and none of the company's officers ever did by my instructions, attempt to hunt up and pay the coupons attached to the identical bonds issued to our company in the hands of others. The two following items quoted in the cross-examination from the Treasurer's report 42
of 1856 and 1857, viz.:

DISBURSEMENTS.

Paid to Davidson Bonds... ...	$549.48
By cash.....	918.50

These two items cannot designate payments by our company on Davidson County bonds as debtors, for we never did pay any Davidson County Bond in the place of that county. These two items must 43
mean some disbursements or expense on account of these bonds or some other purpose that I don't know.

The two items in the reports of the Treasurer for 1856-57, headed "Disbursement," viz.:

Paid to State bond interest..	$22,972.00
By cash State bonds.....	18,180.00

are intended to designate the interest paid in 1856- 44
1857 to the Bank of Tennessee as the agent of the State.

I mean by saying it was the agent of the State, that it was the agent of the State to receive the interest on the State bonds due from the company to the State, and as the agent of the State it paid her coupons both here and in New York whenever they fell due.

45 *Re-cross examination:*

When the company held bank notes it was not necessary to use any exertion to dispose of them, because they passed from hand to hand as money.

The resemblance between a bank-note and a Tennessee State bond is that both were payable bearer, and pass by delivery without endorsement and are both numbered.

It was no part of my duty as President of the Company to receive or pay out the funds of the company
46 unless specially instructed by the Board of Directors. In making the explanations I have made in the re-examinations in regard to the items in the Treasurer's report, I do not speak from my own personal knowledge of the transactions, but have given my opinion based upon my knowledge of the general conduct of the affairs of the company and its course of business.

(Complainant excepts to all that part of
47 this deposition which gives the witness' opinion in regard to the items in the Treasurer's reports, because it is not the best evidence, and the attempted explanations are based not on personal knowledge, but on inferences drawn by the witness from other facts.

S. WATSON,
Solicitor for Compl'ts.)

The income bonds of the Tennessee & Alabama
48 Railroad Company mentioned in the cross-examination, were sold generally by the Treasurer to the citizens of Williamson and adjoining counties. The county bonds issued to the company for stock were principally sold at home; only a few were sold abroad.

Re-examination:

When in my explanations on the re-examination

in chief I state that I know that my company did not 49
pay any Davidson county bonds as debtor in lieu of the county, the fact is stated on my personal knowledge and not as an opinion.

Again, when I state in the re-examination in chief as to the items "State bond interest $22,972.00, By cash State bonds $18,180.00," I state that these items represent interest paid to the State on the amount of bonds lent to us by the State, and do not represent interest paid to the holders of coupons attached to the bonds issued to us, for I can state 50
emphatically that though I presided over the meetings of the board of directors for some ten or twelve years, I never heard it even suggested that it was our duty to pay on the identical bonds issued to our company.

Counsel for the complainants desires the following questions to be asked the witness:

Q. Did you pay the item mentioned in the Treasurer's report of 1855 under the head, "State cou- 51
pons, $4,470.00," or did you pay the amount in the item of "State Bonds interest, $22,972.50?" If so, to whom were the payments made?

A. I did not do it in person. The payments were made to the Bank of Tennessee.

Q. Did you see the payments made?

A. I do not remember to have seen it paid, though I was sometimes with the Treasurer when the payments were made.

3 Q. When you state in the re-examination that 52
these payments were made to the State; do you not mean that they were made to the Bank of Tennessee?

A. I mean that they were made to the Bank of Tennessee as the agent of the State.

And further this deponent saith not.

JOHN S. CLAYBROOKE.

53 After the attorney for the plaintiff had left my office, the said J. S. Claybrooke made the following statement, viz.: "Our company was authorized by act of the Legislature to receive endorsement and guarantee of the State on our own bonds, but the company had it changed so as to make the aid of the State to the company straight Tennessee bonds, and this was done for the reason that the straight Tennessee bonds commanded a better price in the market than bonds of the company endorsed and
54 guaranteed by the State." Which said statement by agreement of counsel for parties plaintiff and defendants may be added to and made a part of this deposition above deposed to.

Attest:

Middle District of Tennessee:

I hereby certify that the foregoing deposition was taken by me and reduced to writing in the presence
55 of the witness and subscribed by him; that I am not of counsel nor attorney for any of the parties to the suits in which said deposition was taken, and that the fee for taking said deposition, amounting to $4.40, has been paid to me by W. Y. C. Humes, attorney for defendants.

Given under my hand at Nashville, in said district, this 23d day of September, 1879.

56

LEWIS T. BAXTER,
Examiner, as aforesaid.

Middle District of Tennessee, ss.:

I, LEWIS T. BAXTER, Clerk of the Circuit Court for the District aforesaid, do certify that the foregoing is a full, true, and perfect copy of a deposi-

tion taken by me as Examiner at Nashville, Tennessee, on the 23d day of September, 1879. 57

Given under my hand and seal of office
[SEAL.] in Nashville, this 25th day of September, 1879.

LEWIS T. BAXTER,
Clerk.

P. 116. BOND BOOK. A.

"Exhibit B." 58

TENNESSEE AND ALABAMA RAILROAD COMPANY.

$200,000.

Received of Andrew Johnson, Governor of the State of Tennessee, two hundred coupon bonds of said State for one thousand dollars each, drawing six per cent. interest, numbered from No. 916 to 1,115 inclusive, dated the 1st day of January, 1854, and falling due on the 1st day of January, 1892, being a part of the first issue, being 300 bonds to 59 said Company under the general Internal Improvement Act passed on the 11th of February, 1852, and the Act amendatory thereof passed, on the 8th February, 1854, the first coupons on said bond falling due on the 1st January, 1855.

Nashville, July 4, 1854.

JOHN S. CLAYBROOKE,
Agent of said T. & A. R. R. Co.
60

I, C. N. GIBBS, Secretary of State of Tennessee, do hereby certify that the foregoing is a copy of a receipt given by John S. Claybrooke, Agent of said T. & A. R. R. Co., for bonds of the State of Tennessee issued to said Company, numbered from 916 to 1,115 inclusive, the original of which is now of record in my office.

61 In testimony whereof, I have hereunto subscribed my official signature, and by order of the Governor, affixed [SEAL.] the great seal of the State of Tennessee, at the department in the City of Nashville, this 18th day of July, A. D. 1879.

CHAS. N. GIBBS,
Secretary of State.

STATE OF TENNESSEE, }
62 *Davidson County.* }

I, JOHN C. FERRIS, sole presiding Judge of the County Court of said County, do hereby certify that Charles N. Gibbs, whose genuine signature appears to the foregoing certificate, is now and was at the time of signing the same, Secretary of State for the State of Tennessee, duly elected and qualified as such, and that said attestation is in due form of law and by the proper officer.

63 Given under my hand at office, this 18th day July, 1879.

JOHN C. FERRIS,
County Judge.

STATE OF TENNESSEE, }
Davidson County, }

I, J. R. MCCANN, Clerk of the County Court of said County, do hereby certify that John C. Ferris, whose genuine signature appears to the foregoing certificate, is now and was at the time of signing
64 the same, sole presiding Judge of the County Court in and for said County, duly elected and commissioned and qualified as such, and that said attestation is in due form of law.

Witness my hand and seal of said Court at office, this 18th day of July, 1879.

[SEAL.] J. R. McCANN.

EXHIBIT TO DEPOSITION OF JOHN S. 65
CLAYBROOKE.

UNITED STATES OF AMERICA, }
STATE OF TENNESSEE. }

At a meeting of the Board of the Directors of the Railroad Company, held at the office of the Company in on day of 1855, the following preamble and resolutions were adopted, viz.: 66

Whereas, The General Assembly of the State of Tennessee, by act passed the 11th day of February, 1852, entitled, "An Act to establish a system of Internal Improvements in this State," and by an amendatory Act, passed the 8th day of February, 1854, authorized the Governor of said State to issue bonds to various railroad companies, after they had organized and complied with certain conditions specified in said Act and amendments, the proceeds of said bonds being intended for the purchase of 67 iron rails and equipments. And

Whereas, It is very desirable that a permanent value shall be maintained for these securities, and to effect this object a plan has been suggested of having union and concert of action between the organized companies included in said Acts, to whom bonds have been or may be issued, by placing all of said bonds, as received, in one and the same channel of negotiation, to consist of two or more 68 Houses, of first character for financial power and influence, thereby, not only depreciation below their par value, but enabling the negotiating bankers and iron manufacturers to carry their market value permanently above par, and thus secure to this Company a greater amount of revenue from said bonds, and said bankers and iron manufactur-

69 ers more fully in making advances of money, rails and equipments, upon the most reasonable terms, from time to time, in anticipation of higher rates for said bonds; and whilst the several companies may be preparing successive sections of their roads for the rails, and otherwise complying in good faith with the conditions of the above-mentioned Acts. Therefore, for the consummation of said plan, and to secure to this Company the benefits to result therefrom

70 *Be it Resolved*, By the Board of Directors of the Railroad Company (one of the roads specified in said Internal Improvement Acts), that John S. Claybrooke, President of the Tennessee & Alabama Railroad Company, Sidney Smith, President of the Mobile & Ohio Railroad Company, and Campbell Wallace, President of the East Tennessee & Georgia Railroad Company, are hereby constituted and appointed the lawful attorneys of this company (either two of
71 their number acting and concurring), with full power and authority to enter into such agreements and covenants with bankers or iron manufacturers, as may be necessary to effect the objects set forth in the foregoing preamble and these resolutions, resolution, and for that purpose to go to New York, England, or elsewhere, as the joint agents of this company, and other railroad companies of the State of Tennessee, that act with this company in the
72 premises.

Be it further resolved, That the earliest practicable arrangement of this matter by the said attorneys is desired by this company, to whom said attorneys will make a report of their doings, accompanied by copies of all agreements entered into by them on the subject of their agency.

Be it further resolved, That on receipt of said report and agreements, all bonds of the State of Ten-

nessee then held, or that may hereafter be received 73
by their company from the State, shall be placed in the one channel of negotiation, as may be agreed for and as prescribed by said attorneys.

And be it further resvoled, That when the joint channel of negotiation shall have been fully organized and established by agreements and covenants, as herein contemplated, the joint agency hereby created therefor shall cease and determine; and this company shall thereafter conduct its business in said channel, in accordance with such agreements 74
and covenants, by its own officers, independently of all other companies.

In witness whereof, the President and Secretary of this Company have hereunto set their names and attached the Company's seal, this day of 1855.

President. 75

Secretary.

REMARKS.

Length of the within-named road in Tennessee, miles.

Terminations at

And connecting the railroad with the railroad.

Estimated time for drawing bonds for 1st section of 30 miles 185 76

Estimated time for drawing bonds for 2d section of 30 miles 185

Estimated time for drawing bonds for 3d section of 30 miles 185

Estimated time for drawing bonds for last section of 30 miles 185

77 Total amount already drawn, $ { Total amount to be drawn for road and bridges, } $

STATE OF TENNESSEE, *County.* } ss.:

Personally appeared before me, Judge of the Circuit Court of County the within named President, and Secretary of the

78 railroad company, with whom I am personally acquainted, who acknowledged that they signed, sealed and delivered the foregoing power of attorney, as they were legally and officially authorized to do, on the day and year therein mentioned.

Given under my hand and seal, this day of in the year eighteen hundred and fifty-five.

Circuit Judge of County.

79

80

1

Deposition of Major Campbell Wallace.

CIRCUIT COURT OF THE UNITED STATES,

WESTERN DISTRICT OF TENNESSEE.

2

CALVIN AMORY STEVENS, on behalf of the holders of bonds issued to the MEMPHIS & CHARLESTON RAILROAD COMPANY, *vs.* THE MEMPHIS & CHARLESTON RAILROAD COMPANY *et al.*	No. In Equity.

CIRCUIT COURT OF THE UNITED STATES,

EASTERN DISTRICT OF TENNESSEE.

3

CALVIN AMORY STEVENS, on behalf of holders of bonds issued to the EAST TENN. & GEORGIA RAILROAD COMPANY, *vs.* THE EAST TENN., VIRGINIA & GEORGIA RAILROAD COMPANY *et al.*	No. 662. In Equity.

4

5 CIRCUIT COURT OF THE UNITED STATES,

EASTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS, on behalf of holders of bonds issued to the EAST TENN. & VIRGINIA RAILROAD COMPANY,

No. 663. In Equity.

6 *vs.*

THE EAST TENN., VIRGINIA & GEORGIA RAILROAD COMPANY *et al.*

CIRCUIT COURT OF THE UNITED STATES,

EASTERN DISTRICT OF TENNESSEE.

7

CALVIN A. STEVENS, on behalf of holders of bonds issued to the CINCINNATI, CUMBERLAND GAP AND CHARLESTON R. R. Co.,

No. 664. In Equity.

vs.

THE CINCINNATI, CUMBERLAND GAP & CHARLESTON R. R'D CO. *et al.*

8

CIRCUIT COURT OF THE UNITED STATES,

EASTERN DISTRICT OF TENNESSEE.

CALVIN A. STEVENS, on behalf of the holders of bonds issued to the KNOXVILLE & KENTUCKY RAILROAD COMPANY,

vs.

THE KNOXVILLE & KENTUCKY RAILROAD COMPANY.

No. 665.

CIRCUIT COURT OF U. S.,

MIDDLE DISTRICT OF TENNESSEE.

CALVIN A. STEVENS, on behalf of bonds issued to the NASHVILLE & CHATTANOOGA R. R'D COMPANY,

vs.

THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY, *et al.*

In Equity.

CALVIN A. STEVENS, on behalf of holders of bonds issued to the NASHVILLE & NORTHWESTERN R. R. Co.,

vs.

THE NASHVILLE, CHATTANOOGA AND ST. LOUIS RAILWAY *et al.*

In Equity.

13

CALVIN A. STEVENS, on behalf of holders of bonds issued to McMINNVILLE & MANCHESTER R. R'D CO.,

vs.

THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY *et al.*

In Equity.

14

CALVIN A. STEVENS, on behalf of holders of Bonds issued to the WINCHESTER AND ALABAMA RAILROAD COMPANY,

vs.

THE NASHVILLLE, CHATTANOOGA
15 AND ST. LOUIS RAILWAY *et al.*

In Equity.

The deposition of MAJOR CAMPBELL WALLACE, President of the Merchants' Bank of Atlanta, taken on behalf of the defendants, at the Merchants' Bank in Atlanta, I. C. D. Woodson, a notary public, for the County of Fulton, State of Georgia, and in the presence of W. Y. C. Humes, solicitor of the defendant, on the 2d day of October, 1879.

16 The said witness CAMPBELL WALLACE, being first duly sworn, deposes and says: My name is Campbell Wallace; my age is seventy-three years; I am a resident citizen of the State of Georgia, and have been for fourteen years last past. I am now and have been for more than six years the President of the Merchants' Bank of Atlanta, actively employed in the duties of that office. I have no connection

official or other, with any of the railroad companies of Tennessee, nor am I at all interested in any of their stock or securities, bonds or assets, nor any bonds issued by any of them or by the State of Tennessee for any purpose, except ten shares of stock of the Knoxville and Ohio Railroad Company. Nor am I interested in any, the smallest degree, in the issue of any of these suits. I was a citizen and resident of East Tennessee all my life until my removal to Georgia in 1865. I was a director in the East Tennessee and Georgia Railroad Company prior to and up to 1853, when I was elected its President, and from 1853 to July, 1865, gave my time and attention almost entirely to the duties of that office, and the interest of that road. I was its chief executive officer, and financial agent. Under my direction and immediate control all its fiscal operations, transactions and contracts were made, consummated, and performed, from 1853 to 1865. I personally know that the State of Tennessee did lend its endorsement and guarantee on and to the bonds of several railroad companies, including bonds of the Nashville and Chattanooga Railroad Company, of the East Tennessee and Virginia Railroad Company and of the East Tennessee and Georgia Railroad. And these company bonds were secured by first liens and mortgages on the railroad companies issuing them in addition to the endorsement and guarantee of the State. However, the 150 bonds of the Nashville and Chattanooga Railroad Company, issued by that company with the endorsement and guarantee of the State to aid in the construction of the Chattanooga Branch of the East Tennessee and Georgia Railroad Company were secured by a first mortgage on the said Chattanooga Branch These bonds of various companies, though secured by the endorsement and guarantee of the State, as well as by first liens and mortgages

21 on the property of the roads issuing them, did not sell for as high prices as straight Tennessee State bonds bearing the same rate of interest and for whatever purpose issued, whether for railroads or purely State purposes.

Before I was elected President, the East Tennessee and Georgia Railroad Company had received from the State of Tennessee State bonds payable to bearer, with coupons attached, payable semi-annually, to the amount of $350,000 as a loan. After I
22 became its President, and up to July, 1861, the East Tennessee and Georgia Railroad Company received in addition to the above, as a State loan bonds to the amount of $812,000, of the same character and description as the above under the general Internal Improvement Act of February 11th, 1852, Ch. 151, and the Acts amendatory thereof; so that our whole debt to the State for six per cent. State bonds lent to us amounted on the 30th of June, 1860 to, and appears in the report of that date as
23 follows:

State loan, . . . $1,162,000

The account as to Company bonds of the East Tennessee and Georgia Railroad Co., endorsed by the State is set down:

Endorsed bonds, . . . $150,000

In our entire dealings with the State bonds issued to our road, we regarded and treated them as the obligations of the State of Tennessee alone, and we treated, construed, and regarded our obligation
24 (arising from the loan of said State bonds to us by the State), as a debt due from the railroad company to the State alone for the amount of the bonds so lent to the company, at their nominal or face value, and they were the equivalent of money for State of Tennessee six per cent. bonds were then worth and selling at par, as the State had never defaulted in the payment of the interest on her bonds at matur-

ity. The $812,000 of State six per cent. coupon 25
bonds payable to bearer issued to said Company during my Presidency were disposed of under my direction by the Treasurer, R. C. Jackson, and by me. They were sold as required by the law, and their proceeds applied strictly in accordance with its provisions. I sold them principally in Tennessee. I never thought of, nor represented, nor directed any one to represent to any buyer that the payment of the bonds to the holder was secured by any obligation of the company or by any lien on the 26
property of the company in favor of the bondholders; I did not think so myself, and never heard it suggested or claimed by any one during the period we were receiving and selling them, nor did I ever hear of such a claim by any one until within the last two years. When we received the several instalments of these State bonds from the State as loans, no State officer then or at any other time instructed, directed or requested us to adopt any system or mode of identification, marking, 27
or noting the particular bonds issued to us, nor even to preserve the numbers, and we did not ourselves adopt any such system or mode, but we simply credited to "State loan" the amount issued at the time, and on sale of them charged to cash. In paying our semi-annual interest to the State on the amount of her loan to us we did not attempt to have the payments so made applied to the particular coupons attached to the bonds issued to us; nor did we attempt to hunt up said coupons to 28
pay them ourselves; nor did we ever entertain the idea that any holder of State bonds was a creditor of the company. On the 15th of December, and on the 15th of June of each year, we paid the semi-annual installment of interest due to the State from our company on the amount of bonds previously loaned to our company by the State. We paid this

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interest to the Bank of Tennessee, as the general fiscal agent of the State, and we paid it indiscriminately in money, or any six per cent. coupons from any State bonds, whether issued to railroads or for any purely State purpose. Having paid our interest to the State, and received the receipt for it from the bank, we felt no further concern whether the State paid her coupons when they matured fifteen days afterwards on the bonds issued to us or not; and we never sought or attempted to get the coupons attached to the bonds issued to our company, nor could we have identified them. But as to the bonds of our company endorsed by the State we did seek and did pay the coupons on them as our own liability; they amounted to $150,000.00 as at first issued, and were issued under a special act for the benefit of our branch road from Cleveland to Chattanooga. In keeping the account and paying the interest due from our company for the amount of bonds lent by the State to our company, we regarded and treated it as interest due to the State from our company on the amount of loan, and not as interest due from the company to the holders of the bonds issued to our company.

If I had regarded or thought our company was liable to the holders of the coupons and bonds of the State lent to us, we would certainly, for our own protection, have pursued the same course as to them, both in regard to the interest coupons and the bonds, that we did pursue in regard to our bonds endorsed by the State.

As to these latter bonds, we carefully and regularly, every six months, paid the interest coupons attached to them as our primary obligations; and we saw to it that the State authorities, the Sinking Fund Commissioners, applied each annual payment to the extinguishment of our own bonds endorsed by the State. We bought any six per cent. cou-

pons of State bonds which were offered to us, and 33
took them sometimes to accommodate our friends giving them the money for them; and coupons so bought, and taken, we used to pay our interest to the State, no matter from what State bonds they were taken, so they were from Tennessee six per cent. bonds, and so we satisfied the State authorities that we got them before or on the 15th day of December or 15th day of June, the dates of our payments. We paid our interest promptly and regularly to the State every six months before the 34
war, and up to January 1st, 1863; but we afterwards fell behind in paying our interest to the State as follows, as I reported to the stockholders:

"The interest on State loan was paid up to 1st of January, 1863, and the balance of $155,550.00 was not paid to the State, when it fell due in 1863, 1864, and to 1st of July, 1865.

Although the State defaulted in the payment of all her interest coupons on all her bonds during the war, and although this unpaid interest of our 35
company to the State, $155,550.00, remained unpaid for several years, yet no holders of the coupons, or of any interest coupon attached to the bonds issued to our said company ever presented such coupons or coupon to our company for payment, or ever demanded or claimed payment of such coupons or coupon from our company within my knowledge or information. In making the successive annual payments to the State of the sums produced by setting apart the percentum on the amount of bonds 36
issued to our company, as required by the 7th section of the Act of February 11th, 1852, ch. 151, and also under the amendments thereto, we construed and treated them, and had them receipted for by the State officials as credits on our company's debt to the State for the State loan, and as payments in absolute discharge of that much of that indebted-

37 ness. The mode of the first act was to raise the sinking fund by preserving the State bonds after they had been assigned to the Governor and paid into the Treasury of the State by the company, and reinvesting the interest accruing on them in other State bonds in order to accumulate before the State bonds fell due a fund for the State sufficient to enable her to pay her bonds. This clause of the first act contemplated that, although these annual installments were absolute payments by the com-
38 pany on their debt to the State, and receipted for as such when made, yet the company should continue to pay to the State the interest on the amount of bonds originally loaned to it, and these annual payments, though absolute when made, were to be credited as of the date when they and their accumulations should equal the debt due from the company to the State for the amount of State bonds lent to the company.

Seeing the management of this scheme, I detected
39 that it was liable to confusion in the keeping of the accounts at Nashville of the payments of bonds and reinvestment of interests on bonds paid in by so many companies—some twenty to twenty-five; and more especially as these matters were managed by political appointees, changed every two years with the Governor's election, and not by business men selected and retained for their financial skill. By this confusion we were in peril of losing some of our credits for bonds paid in and thus have to pay again
40 the credit so lost. For these reasons I, as President of the East Tennessee & Georgia Railroad Company, solicited and induced the Legislature, having John Marshall, as President of the Tennessee & Alabama Railroad Company, to help me, to increase the annual payments required to sums adequate to liquidate the debts of the several companies to the State, before the State bonds should fall due, without the

compeer mode above set forth, of keeping the 41
bonds, setting aside the accruing interest, reinvesting it, and thus accumulating the fund for the State.

The Legislature did increase the annual payments of percentage to 2½ per centum on the amount of bonds loaned to the respective companies, and did require the bonds in which these annual bonds were to be made to be cancelled when paid in, instead of being kept, and did allow the payments to be credited as of the dates they were actually made 42
instead of as of the date the accumulated fund should equal the Company's debt for the amount of State bonds loaned to it. The Legislature very willingly and readily adopted this measure because it increased the amount of State bonds annually to be paid by all the railroad companies to the State, and would thus accomplish the purpose of the original act of retiring by or before the maturity of the bonds as many of them as the State had issued to railroad companies. 43

The officers of some of the railroad companies were opposed to this increase of annual payments; but I, as President of the East Tennessee & Georgia Railroad Company, not only solicited and favored its adoption, but after its adoption I increased our payments beyond the requirements of the law. As evidence of this, I here, as part of my deposition, quote the following brief and truthful report on this subject made by me to the stockholders on the 3d of September, 1862, viz: 44

"The Internal Improvement law requires 2½ per cent. to be paid annually on your funded debt, which is ample to liquidate your entire indebtedness to the State before it matures.

In consequence of the distracted condition of the country. the Legislature suspended the payment of this sinking fund, but we have thought it prudent

45 and to your interest to continue to pay not only the 2½ per cent., but as much more as possible, and your company are now some three years in advance of any legitimate call that can be made for payment of sinking fund. Your funded debt at present stands as follows:

Original State loans		$1,162,000
Paid and cancelled		125,000
		$1,037,000
46 Bonds endorsed by State	$150,000	
Paid and cancelled	35,000	
	$115,000	
Mortgage bonds		$ 800,000
Paid and cancelled		154,000
		$ 646,000
Total		$1,798,000."

47

The $800,000.00 of mortgage bonds were bonds of the company, with which the State had nothing to do.

I herewith file as exhibits to my deposition, copies of the receipts of the State officers for the $125,000.00 paid to the State in its six per cent bonds on the State loan to our company.

It will be observed that the $14,000.00 and $2,000.00 were paid in prior to 1860, and these re-
48 ceipts were acknowledgments of the cancellation of the bonds, under the Act of 1859-60, Ch. 90, previously paid in. The receipts, as to the endorsed bonds, show that we did not attempt to pay these endorsed bond debts in any but the identical endorsed bonds; while the State loan we paid in any six per cent. bonds of the State without reference to what they were issued for, whether for railroads or

any purely State purpose. The Exhibits are marked 49
Nos. 1, 2, 3, 4, 5, 6.

The Government of the United States, by its military authorities, and for military purposes, occupied and operated the road for about three years during the war, to the exclusion of the company, its agents and officers, and without compensation to the company, so far as I know. During the war the interest falling due, and unpaid by the company on its debt to the State for the State loan, on its bonds endorsed by the State, and on the 50
other outstanding bonds of the company, accumulated to the amounts following:

On State loan	$155,550 00
On bonds endorsed by the State	21,030 00
On mortgage bonds	98,910 00
Total July 1st, 1865	$275,490 00

After we made payments annually and semi-an- 51
nually of money or bonds to the State, under the Sinking Fund provisions of the 7th Section of the Act of 1852, Ch. 151, these funds thus paid to the State were no longer subject to or controlled by the companies, but were managed and controlled by the officers and agents of the State, as belonging to the State, and without accountability to the railroad companies. The practical financial effect of our annual payments to the State, under the Sinking Fund provisions, up to the 4th day of June, 1862, 52
when the last payment was made under my presidency, was the discharge of $125,000.00 of our State loan debt to the State, and the retiring of that amount of State bonds that had been issued for any and all purposes, as we had bought any State six per cent. bonds we found on the market without reference to the purpose for which they were issued;

53 and as they all bore the same price, whether issued to railroads or for any other purely State purpose.

The annual payments by the other railroad companies produced a like effect to the extent of those payments. If this scheme of the original act had been carried out, unobstructed by the war, or other adverse events, the final result would have been that the railroad companies, before the maturity of the bonds lent to them, respectively, would have paid the full amount of their respective debts to the State
54 for the State loans to them, by retiring to the State that amount of the State's own six per cent. bonds.

As the 7th section allowed us to buy and pay into the State Treasury, and we did buy and pay in any Tennessee six per cent. bonds without regard as to whether issued as loans to railroads or for any purely State purpose, many State bonds issued for other purposes that as loans to railroads, no doubt were retired and would necessarily have been so retired, leaving a like amount of the bonds issued to
55 railroads outstanding, and wholly unprovided for, except so far as the good faith and credit of the State secured them. That thus, many bonds issued to the railroads would have been left outstanding, was a result following necessarily from that provision or stipulation of the 7th section of the first act, allowing the railroad companies to make their annual payments by buying any bonds of the State of Tennessee, and paying them into the Treasury of the State after assigning them to the Governor.
56 Bonds so paid in were a perfect security to the State for the debt of the railroads to her, but were necessarily unavailable to a holder of outstanding State bonds. As to the State, the operation of this provision if carried out was to secure to her the payment of the full amount of the State loans to the railroads; and during the process and periods of payment to maintain all her six per cent. bonds

issued for any purpose at one uniform price, and 57
this was the actual fact, uniformity of prices as to
all her six per cent. bonds. As to the railroads, the
operation of this stipulation or provision was to se-
cure to each of them the privilege of paying their
State loan debt in any State six per cent. bonds,
which they could do with greater facility and cer-
tainty than if required to hunt up the particular
bonds issued to them. As to the bonds themselves
the operation of this provision was to benefit them,
by giving them all the same chance to be retired by 58
any railroad purchase, and by increasing the State's
ability to pay as her debt was diminished. When
I made the last payment on the 4th of June, 1862,
of $100,000 in State bonds, the payments of the East
Tennessee and Georgia Railroad Company, were
three years ahead of the requirements of the sinking
fund provision, although they, the sinking fund
requirements, were suspended by statute, and had
we not been prevented by the disasters of the war,
taking away our road and destroying our income, 59
I would have continued to make the payments as
fast and large as our means would have enabled us,
until we had paid the State loan debt in full to the
State in her own bonds or money, and extinguished
our liability unless otherwise ordered by the direc-
tors. The only possible way the interest accruing on
the State bonds paid into the State Treasury annually
by the railroads, could be made available and used
as a sinking fund, was for the State through her own
officers voluntarily to set aside so much money 60
from the funds in her Treasury; just as she would
so much of her taxes collected, or any other rev-
enues for a defined State purpose; as to meet the
expenses of her Public School, or any other State
obligation. The practical management was of her
revenues as a sinking fund to meet her own obliga-
tions.

CAMPBELL WALLACE.

61 I, C. D. WOODSON, a notary public in and for the city of Atlanta, in the State of Georgia, hereby certify that on the second and third days of October, 1879, in the office of the Merchants' Bank of Atlanta, and in said city of Atlanta, I was attended by the counsel, W. Y. C. Humes, for the defendants, and the witness aforesaid; that the said witness was duly sworn and examined, and this deposition was reduced to writing by me, and read by the witness, and by himself subscribed in my
62 presence, and that Exhibits Nos. 1, 2, 3, 4, 5, 6, were introduced in said cause during the taking of said deposition.

Given under my hand and seal of office, this 3d day of October, 1879.

C. D. WOODSON,
Notary Public,
Fulton County, Ga.

(Copy.)

63 EXHIBIT NO. 1 TO CAMPBELL WALLACE'S DEPOSITION.

No. 2. NASHVILLE, TENN., June 30th, 1860.

Received from the East Tennessee & Georgia R. R. Co., fifteen East Tennessee & Georgia R. R. Co.'s endorsed bonds, each for one thousand dollars, and numbered as follows: Nos. 21, 34, 39, 56, 60, 61, 62, 141, 24, 52, 22, 25, 150, 55 and 146.

These bonds are received on account of the semi-
64 annual payment due by said company as Sinking Fund, being 10,875 dollars, due on the 1st day of April, 1860, and the balance of the fifteen bonds being an advance payment due 1st October, 1860.

ISHAM G. HARRIS, *Governor.*
J. T. DUNLAP, *Comptroller.*
} *Com'rs of Sinking Fund.*

Bonds. 65

(Copy.)

EXHIBIT NO. 2 TO CAMPBELL WALLACE'S DEPOSITION.

No. 4. NASHVILLE, TENN., Dec. 22d, 1860.

Received from the East Tennessee & Georgia R. R. Co., seven endorsed bonds, each for one thousand dollars, and numbered as follows: 134, 132, 131, 133, 135, 10, 89. These bonds are received 66
on account of the semi-annual payment due by said company as Sinking Fund on the 1st day of October, 1860, and returned to said company after cancellation, under the act of 1859-60, ch. 93, section 2.

J. T. DUNLAP, *Comptroller.*
G. P. SMITH, *Pres't Bank of Tenn.*
} *Com'rs of Sinking Fund.*

7 Bonds. 67

(Copy.)

EXHIBIT No. 3 TO CAMPBELL WALLACE'S DEPOSITION.

No. 12. NASHVILLE, Tenn., Feby. 5th, 1861.

Received from the East Tenn. and Georgia R. Rd. Two Tennessee State Six per cent. Bonds, each for one thousand dollars, and numbered as follows: Nos. 1,127 and 10,629, reinvestment. These bonds are received on account of the semi-annual of in- 68
terest of the old sink. fund.

J. T. DUNLAP, *Comptroller.*
G. P. SMITH, *Prest. Bank of Tenn.*
} *Comrs. of Sinking Fund.*

2 Bonds.

69 (Copy.)

EXHIBIT No. 4 TO CAMPBELL WALLACE'S DEPOSITION.

NASHVILLE, Tenn., 2d Nov., 1861.

The Sinking Fund Commissioners have this day cancelled fourteen straight six per cent. coupon bonds of the State of Tennessee, each for one thousand dollars, belonging to the sinking fund of the
70 East Tenn. and Georgia R. Rd. Company, and placed the amount, fourteen thousand dollars, to the credit of said East Tenn. and Georgia R. Rd. Co. The above fourteen bonds thus cancelled were put into the sinking fund of the East Tenn. and Geo. R. Rd. Co. in place of twelve East Tenn. and Va. R. Rd. Co.'s endorsed bonds, and two Nash. and Chatta. R. Rd. Co.'s endorsed bonds previously purchased for account of East Tenn. and Ga. R. Rd. Co.'s sinking fund.

71 G. C. TORBETT,
J. T. DUNLAP,
Sinking Fund Commissioners.

(Copy.)

EXHIBIT No. 5 TO CAMPBELL WALLACE'S DEPOSITION.

72 NASHVILLE, Tenn., Nov. 20, 1861.

Received from the East Tennessee and Georgia Railroad Company, nine Tennessee State six per cent. bonds, each for one thousand dollars, and numbered as follows: Nos. 4,333, 4,334, 5,851, 9,584, 9,086, 7,115, 10,415, 4,332, 2,068. These bonds are received on account of the payment due by said company as sinking fund, when next called

for, and are now cancelled under act of 1859–60, ch. 93. 73

ISHAM G. HARRIS, *Governor*,
J. T. DUNLAP, *Comptroller*,
G. C. TORBETT, *Prest. Bank of Tenn.*
} *Comr. of Sinking Fund.*

9 Bonds.

74

(Copy.)

EXHIBIT No. 6 TO CAMPBELL WALLACE'S DEPOSITION.

CHATTANOOGA, TENN., June 4th, 1862.

Received from the East Tenn. & Ga. Railroad Co. one hundred Tennessee six per cent. bonds, each for one thousand dollars.

75

These bonds are received on account of the payment due by said company as sinking fund, and are now cancelled under Act of 1859–60, Ch. 93.

ISHAM G. HARRIS,
Governor.

G. C. TORBETT,
Pres't Bank of Tenn.

100 Bonds.

76

CHATTANOOGA, June 4th, 1862.

Received from the East Tenn. & Ga. R. Rd. Company eleven endorsed bonds, each for one thousand dollars, and numbered as follows: 42, 43, 59, 79, 49, 45, 50, 100, 51, 46 and 27. These bonds are received on account of the payment due by said company as sinking fund, and after cancellation re-

77 turned to said company, under Act of 1859-60, Ch. 93, Sec. 2.

ISHAM G. HARRIS,
Governor.

G. C. TORBETT,
Pres't Bank of Tennessee.

I, G. W. Blackburn, certify the above is a true copy of the original, on file in my office.

78 In witness whereof, I have hereunto set my hand and seal of office, this 1st day of February, 1868.

G. W. BLACKBURN,
Compt.

79

80

Deposition of Vernon K. Stevenson.

UNITED STATES CIRCUIT COURT,

WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement Bonds of Tennessee, issued to the MEMPHIS & CHARLESTON RAILROAD COMPANY,

against

MEMPHIS & CHARLESTON RAILROAD COMPANY *et al.*

1

2

52 Broadway, August 12, 1879.

Hearing to take the deposition of VERNON K. STEVENSON, pursuant to notice.

Present—Mr. ANDREWS for Complainant.
Mr. HUMES for Defendant.

It is consented and agreed by both parties that the deposition of the witness, Vernon K. Stevens, shall be taken but once, and is to apply to each of the above-entitled actions, and be considered as testimony in each. 3

It is agreed by counsel that this deposition need be taken but once, and that it may be read as evidence in all the causes in which the Louisville & Nashville Railroad Company, either at Nashville or Memphis, is party. 4

VERNON K. STEVENSON, being first duly cautioned and sworn in each of the above entitled actions, deposes and says:

5 *Direct-examination* by MR. BAXTER, Defendant's Counsel:

Q. What is your name, age, residence and occupation?

A. My name is Vernon K. Stevenson; I was 67 years old the other day; I reside in the city of New York; I am President of the Real Estate Trust Company, and in some respects agent for railroads.

Q. Were you ever connected at any time with
6 any of the railroads of Tennessee; if so, with what railroad, when and in what capacity?

A. I was connected with the railroads of Tennessee. I was first Commissioner for the Nashville and Chattanooga Railroad under the charter. I was then first President of it, and continued so for 20 or 30 years. I was then President of the Winchester and Alabama Road, and so continued until its completion, when I resigned. I was then President of the Nashville and Northwestern Road, and
7 continued so until after the close of the war. I was President of all three at once, I think; that is, the succession, I came into the Presidency of them. I was President of the Nashville and Chattanooga Road from about 1844-5 to 1865, and I was President of the Northwestern Road. I don't recollect exactly the time I became President of the Winchester and Alabama Railroad. It was after the first organization had failed to build the road. It was broken down, and I took it up and finished it
8 in a couple of years, in connection as a branch of the Chattanooga Road, in connection with it and its interests. The Northwestern Road, I think, I took possession about 1858-9 as the President, but I don't recollect accurately the time. It had been under contract and broken down also. I took it up and finished it in connection with the Nashville and Chattanooga Road.

Q. Did you as president or as the officer of any of said railroad companies receive any bonds from the State of Tennessee loaned to said companies by the State under the Internal Improvement Law of that State? 9

A. Yes, sir, I did.

Q. In the negotiating or disposing of said bonds did you sell them directly to purchasers or were they sold through bankers and brokers generally?

A. Well, I think those on the Winchester and Alabama Railroad were all sold through bankers and brokers, perhaps some of them might have been delivered to parties we purchased iron of and foreign parties. My impression is that they were pretty much all disposed of through bankers or brokers, either by the company directly or through parties that they dealt with. 10

Q. In negotiating bonds were any representations made by the company or their authorized agents to the effect that the bonds were liens upon the roads in favor of the holders of the bonds? 11

(Objected to as immaterial).

A. Never that I knew of—never in any case. Straight bonds sold for more than the endorsed bonds; that fact had been tested by the sale of bonds with roads that I was connected with. The endorsed bonds by the State for railroads sold for less than straight bonds in all cases, and therefore parties selling bonds and parties buying bonds were each mutually anxious that no idea of lien should be had on either side. There was a difference in price of one to two or three per cent. on all bonds endorsed by the State for the roads in the State and straight bonds issued by the State without any liens upon anything. 12

Q. Do I understand that bonds of the State of Tennessee which had been issued to pay for the

13 subscription of the State for stock in turnpikes, having no lien upon anything, sold for more than bonds of such railroad companies as the Nashville & Chattanooga Railroad and the East Tennessee & Georgia Railroad endorsed and guaranteed by the State?

A. I do; the difference was one to three per cent. never less than one, that I ever recollect of, and as high sometimes as three per cent. difference.

Q. In selling State bonds loaned to railroads in
14 the New York market, what endorsement or system of marking, if any, was resorted to by which the bonds could be known in the stock market as having been loaned to any particular company?

A. There was no such endorsement that I ever heard of; none on any of the bonds that I had anything to do with.

Q. What was the difference in price, if anything, between the straight bonds loaned to the railroads under the Internal Improvement Act of 1851-2, and
15 straight State bonds that had been issued to build the Capital, buy the Hermitage, and for other purely State purposes?

A. Not one particle; they all sold precisely the same. No question was ever asked until after the war, as to any bond issued by the State being more valuable than another bond issued by the State.

Q. What was the difference in price, if any, between State bonds issued to important and solvent roads and to those that were issued to unimportant
16 and insolvent roads?

A. There was not a particle of difference; and no difference in the price after the roads became insolvent even after the war. Nobody ever asked or cared whether the bonds were issued for the Nashville & Henderson Road or whether issued for the East Tennessee & Virginia or Memphis & Charleston Road, which was then one of the best railroads in the

State; nobody asked any questions and never thought who they were issued to, or how they were issued. 17

Q. Was there any record or source of reference kept here in New York by which purchasers of Tennessee bonds could ascertain to what particular companies they had been issued?

A. Not that I ever heard of; never heard any questions asked. If you called Tennessee bonds, that's all you said, it's a Tennessee bond. There was no distinction that I ever heard of. 18

Q. When was the first information given to the public by which they were enabled to select out the bonds issued to particular railroads?

A. Well, I don't know of my own knowledge about that, I never heard of it until a few years ago.

Q. What is the difference now on the Stock Board in New York, between the price of Tennessee bonds loaned to railroads and those issued by the State for other purposes? 19

A. None that I know of; I don't know a particle of difference.

Q. What is the difference in price now between bonds of the State loaned to solvent and important roads and those loaned to insolvent and unimportant roads?

A. None at all that I know of; I don't think the question is asked in dealing in them even to-day, at least I have not known of its being asked as to what roads the bonds are issued to. 20

Q. Were the bonds loaned to different railroad companies generally disposed off as soon as issued, were they in some instances held for greater or less periods of time by the companies?

A. Well, all the strong roads held their bonds; they earned them before they got them, and they paid what the State required to be paid before they

21 got them, and disposed of them generally as necessity required future payments to be met, and generally held some all the time. One company I was connected with held its bonds and held over bonds when the road was finished. When I resigned as President I turned over the bonds to the Board that was left over, with the North-Western Railroad Company that I was building, and it ought to have been pretty hard pressed, as we took it broken down, and yet we always had more or less bonds on
22 hand. From the time of receiving until the next time of receiving we almost always had bonds on hand, sometimes a good many.

Q. Between the time that a company would receive bonds from the State and the time that it would negotiate these bonds to outside parties, was the interest paid by the company to the State or not?

A. Yes, always.

Q. What was the price of Tennessee State bonds
23 when the Internal Improvement Act of February, 1852, was passed. Were they at or above or below par, and how much?

A. I don't recollect accurately; my impression, generally, is that the bonds were never below par during the building of the road except, perhaps, in the Panic for a very few weeks. They were always about par, or a little above. Certainly that was so about 1852, and from that to 1854, 1856, and 1858. Perhaps 1857 is the time I said there was a panic,
24 and the bonds might have been for a little while below par, but I don't think they continued so long.

Q. When railroad companies would receive bonds from the State under that law, would they keep any list or memorandum of the numbers of the bonds received by them so as to identify them and keep trace of them?

A. No; not for that purpose, but whenever any 25
were shipped I always had the numbers taken until I knew when they were received so as to identify them in case they were stolen or lost on the way.

Q. I mean by my last question was any such record kept with a view of being able to trace the numbers of the bonds so as to know what bonds to pay off?

A. No, sir; you paid in any that you had; you paid in just as you chose; bonds and coupons were indiscriminately paid in; they would be paid 26
in without regard to whether they belonged to bonds issued to them, or any other bonds, unless it was endorsed bonds. We always paid identical endorsed coupons and we paid identical endorsed bonds in redeeming them, because our immediate liability was on them, but the other bonds we never took any charge of, because we did not consider there was any lien on them; we never undertook to pay the particular bond issued to us, but whenever it came to paying endorsed bonds, they were very 27
careful to take up bonds that were endorsed for them, and so with the coupons, that is they paid the coupons that the State endorsed for them.

Q. When railroad companies of Tennessee would pay the interest, which they had agreed to pay, to whom did they pay it?

A. They paid it to the State.

Q. Through whom?

A. To the Bank of Tennessee. It was a State bank, belonging to the State, and its business was 28
geaerally done through that bank. The Bank of Tennessee was always the fiscal agent of the State of Tennessee.

Q. When a railroad company would pay in a given amount of money to the Bank of Tennessee for interest, would it designate to the bank the particular bonds or coupons upon which that money

29 was to be paid, or did it just pay in so much money on account of interest due from the company to the State?

A. Well, the companies knew always what they had to pay, and sometimes they would go and pay it. Say the company owes this to the State for interest on the bonds issued to it; sometimes they would pay in part to the State and the State would let it run a little, but we would pay it all in from time to time, but it was never paid on any particu-
30 lar bond; it was paid as so much interest due the State.

Q. Who paid out this money and took up the coupons of the State?

A. The Bank of Tennessee. I suppose the money was paid into that bank, who kept the coupons as vouchers to show that they had been paid.

Q. Did any railroad company with which you had any connection, or any other company with whose course of business you were acquainted, have
31 any agent either at Nashville, New York or Philadelphia to pay the interest on straight State Bonds, that had been loaned to them?

A. No, sir, never.

Q. Did any bondholder of Tennessee ever present to any railroad company, so far as you know, any coupons of the State Bonds loaned to such company and ask payment thereof from such company?

A. Never that I heard of.

Q. These coupons which had been paid and taken
32 up by the State; were they kept by the State or returned to the companies?

A. I don't recollect of any being returned to the companies.

Q. Are you acquainted with the circumstances that led to the change in the Internal Improvement system of Tennessee from endorsing bonds of the companies by the State to loaning bonds of the

State to the companies? Please state fully all connection you had with the change of the system, if any; and state if you know what were the motives and reasons which induced such change? 33

A. It was brought about on the part of the railroad companies to have straight bonds because they sold for more, and the State did not care whether they endorsed or issued straight bonds, they expected to be responsible in either case, and, as at that time they did not issue any more than they were well secured in, it made no difference to the members of the Legislature which they voted for. 34

Q. Where were you living in 1869 and 1870?

A. In New York.

Q, What business were you engaged in then?

A. I think I was in the real estate business—real estate agent here. I went into business here to start my son. He was anxious to go into law or merchandizing and he did not care which. I continued in business with him four or five years, until 1871 or 1872, when I withdrew from his business, and he is carrying it on now. 35

Q. Was the fact known in New York in 1869 and 1870, that the railroad companies of Tennessee were paying off their debts to the State by issuing company's bonds and using the proceeds to buy up bonds of the State to retire their debts?

A. It was very publicly done. The bonds taken for that purpose bought and talked about all the time, swapping, exchanging, twisting to get the bonds to pay it it was a very notorious matter here, as much so as anything, because there was so much of it; I have no doubt every bondholder was applied to more than once and the explanation made what they wanted with the bonds. 36

Q. Was the fact known in New York in 1870 and 1871 that the State of Tennessee had filed a bill at Nashville, claiming that the lien belonged to the

37 State, and asking to sell such a delinquent railroad as had been unable to buy up bonds of the State enough to pay off their debts?

A. It was a matter generally understood among bondholders, and it was thought by them that the bonds would be so benefited by taking so much off the market.

Q. What proportion of the entire bonded debt of Tennessee is held in New York, do you suppose?

A. Four-fifths, probably; I should think here
38 and in European agencies, but I don't know accurately.

Q. Did you ever hear any holder of Tennessee bonds complain of the action of the State and of the companies in retiring their debts, or selling out their railroads until the litigation in this case?

A. No, sir; never.

(This entire examination is taken subject to legal objection, and complainant's counsel
39 moves to strike out all the answers based upon hearsay, and not upon personal knowledge, and each and every of them.)

Cross-examination by MR. ANDREWS, complainant's counsel, begun:

1 x Q. Now, Mr. Stevenson, you state that you are an agent for the railroads in this city. Will you please state what railroads you are agent for?

40 A. The Nashville & Chattanooga road and its branches.

2 x Q. Are you a holder of any of the securities of the Nashville & Chattanooga road?

A. I hold some few of the securities, but not many.

3 x Q. Do you own securities on any other Tennessee railroads?

A. No, sir.

4 x Q. Are you a holder of Nashville & Chatta- 41
nooga securities, and to what amount?

A. I hold very little of it.

5 x Q. How much of the stock?

A. Well, I hold quite a large amount of stock of the Nashville & Chattanooga and St. Louis.

6 x Q. That is one of the roads against which bills are pending by Tennessee bondholders for the enforcement of their statutory liens, is it not?

A. Yes, sir.

7 x Q. During the time you were an officer of the 42
Tennessee railroads did you ever have occasion to give a receipt to the State of Tennessee or its officers for bonds of the State received by your companies?

A. I think I have.

8 x Q. Do you know whether or not, as a matter of fact, those receipts given by you did not specify the numbers of the bonds received by your companies?

A. I don't recollect; I think it very likely, but I don't recollect. 43

9 x Q. I understand you that the companies over which you presided I think you were President?

A. Yes, sir.

10 x Q. Did you not keep a record of the numbers and descriptions of the Tennessee bonds received by them?

A. I don't recollect that they did; I may possibly be mistaken in that; their books will show more correctly.

11 x Q. You are not sure they did not keep such 44
a record?

A. No, I am not sure whether they kept a record or not; they kept a record when they shipped the bonds.

12 x Q. I understand that you personally participated in the negotiations by which your Companies disposed of Tennessee bonds to the first

takers. I think that is a correct statement of your testimony?

A. In some cases, not generally.

13 x Q. Now in those cases in which you did personally participate in negotiating, I understand you that it was desired by the purchasers of those bonds that there should be no lien to protect those securities?

A. No, I have not said that at all.

14 x Q. I give your exact words?

A. I stated that it was mutually desirable by the parties, and gave as the reason that the bonds sold for less.

15 x Q. Did you ever receive any indication from any purchaser of Tennessee bonds that he did not wish to have a lien to secure the bond that he was about to purchase?

A. I don't think I ever heard the question to come up in any shape except when the bonds were being gotten up because nobody ever asked for a lien. When bonds were being gotten up the straight bonds issued to the roads would bring more, and as that was a matter which would meet the wishes of the buyer I presume they would have the same feeling as the seller, as they sold for more.

16 x Q. Did the straight bonds issued by the State of Tennessee, prior to the General Internal Improvement law of 11th February, 1852, sell above par or at par. I mean all of them; and was the credit of the State of Tennessee at that time entire unimpeachable and unimpeached?

A. I don't recollect of their ever having sold under par. I don't think they sold for less than par, and if they did it was for a very short time and for a very small amount.

18 x Q. How did the State credit of Tennessee stand then?

A. I don't think any State stood better than Tennessee.

19 x Q. Did the straight bonds of the State of 49
Tennessee, issued prior to the year 1851, and so in the year 1850, and during a part of 1851, until the fall or winter, did they not sell at a better price and command a higher credit than the State bonds issued after the Internal Improvement Law was passed?

A. I think not; if there was any difference it was a very slight difference and was not regarded; it had no effect at all.

20 x Q. Then I understand you that the State 50
bonds issued after the General Internal Improvement Law sold for a better price than those immediately preceding its passage?

A. I don't think it had any effect. The general impression here was that the State was secured and therefore the large volume of bonds issued did not affect its credit.

21 x Q. What is the lowest price you think Tennessee bonds sold at; I refer to the years 1850-'51,

A. I do not recollect the bonds selling below par, 51
but not having very much connection I may be at fault in the matter. After the bonds were issued I had connection and I think I recollect pretty accurately.

22 x Q. Now you were an officer of these railroads, Mr. Stevenson; how many Tennessee bonds could be floated—were floated at par before the passage of the act of February 11th, 1852, during 1850 and 1851, easily and without difficulty?

A. You can tell if the State was giving away 52
bonds there would be many afloat, but if the State were issuing bonds where it was secured, as the early bonds were secured and all well secured, they could be issued without impairing its credit, and it was the knowledge of that fact that prevented the impairing its credit.

23 x Q. Did you know, or ever hear, or ever read,

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bonds there would be many afloat, but if the State were issuing bonds where it was secured, as the early bonds were secured and all well secured, they could be issued without impairing its credit, and it was the knowledge of that fact that prevented the impairing its credit.

23 x Q. Did you know, or ever hear, or ever read,

53 that the act of the Tennessee Legislature passed on the 11th February, 1852, under which I understand that your companies received bonds, contained these words: "That so soon as the bonds of the "State shall have been issued for the first section "of the road as aforesaid, they shall constitute a "lien upon said section so prepared as aforesaid "* * * and the State of Tennessee upon the is- "suance of said bonds, and by virtue of the same "shall be invested with said lien or mortgage
54 "without a deed from the company for the payment "of said company of said bonds with the interest "thereon as the same becomes due."

A. I had a great deal to do with the getting up of that law, and was by when every word was scanned, talked and reckoned about. Mr. Frank Fogg wrote it. He was a brother to my brother-in-law; and I stumped the State to get it passed; we could not get it passed before, and I went to the counties where the opposition was and spoke
55 against the politicians and passed that law.

24 x Q. Did you ever hear of an Act passed at the same session of the legislature, about three weeks and a half before the passage of this general law by which the issue of State bonds to the East Tennessee and Virginia Railroad for building the bridges was authorized?

A. I had very little to do with that; I believe that there was such an act passed for one road.

25 x Q. Do you know what model was taken for
56 drafting this General Improvement Law?

A. We took the the model from the earliest roads in South Carolina in getting up our charter.

26 x Q. Now, as you have read the passage I have just quoted from that law, how could you state in your direct examination that the bonds were never considered, if I am correct in quoting you, liens upon these roads?

A. In drawing up that act it was solely intended 57
to secure the State, and the law was made as distinctive as possible in that direction to secure the State only.

27 x Q. What did they mean, then, that the bonds should constitute liens?

A. Very well; the State issued bonds, and the State was liable for the bonds.

28 x Q. Did the Bank of Tennessee ever lend any of the companies with which you were connected, moneys to pay their interest with on these bonds? 58

A. I don't recollect that they did; they may have done so, but I don't recollect; I was director in the Union Bank from the time it broke down in 1837 until the war; my business was generally done there, and any borrowing was done at the Union Bank; but we did not do much.

29 x Q. Did the State bonds your railroad received contain any reference to any legislation of the State of Tennessee under which they were issued? 59

A. I don't recollect, sir; not accurately to speak of, because it is a matter I had not charged my mind with.

30 x Q. You state that the Tennessee bondholders made no objection to the act of the Legislature of 1869–70; do you not know that a committee of Tennessee bondholders about that time obtained the opinion of the late Chief Justice of the State of New York, and of another eminent lawyer in this city, to the effect that that legislation of Ten- 60
nessee impaired their interests in the liens on the railroads?

A. No, sir. I knew nothing of it at all. A great many bondholders came here, and I was asked to the meetings about that time and afterwards. They were the large bondholders.

31 x Q. Do you not know that that opinion was printed, and publicly and widely circulated?

61 A. No, sir. Never saw it. I don't think I ever heard of it even. It may have been done, but I never heard of it before.

32 x Q. You mention that there was a great deal of buying and changing and operating, or words to that effect, in Tennessee State bonds, or by third parties under these substitution laws. Were you interested in railroads at that time?

A. Yes, sir. I was interested in the Nashville and Chattanooga and St. Louis Railroad. I held
62 stock in it for thirty years.

33 x Q. You are not an officer now?

A. No, sir.

34 x Q. Were you consulted in reference to the purchases of bonds by any of these companies?

A. Yes, sir.

35 x Q. What companies?

A. The Chattanooga road had to purchase bonds to pay for the Northwestern road, and that led me in contact with buyers of other roads in Tennessee.

63 36 x Q. I suppose it was your object, and that of your coadjutor, to purchase Tennessee bonds at as low a price as possible, for the purpose of this substitution?

A. Well, I don't understand exactly your meaning. We gave the market prices and never made an attempt to interfere directly or indirectly. I think our company paid as high an average as 70% on the dollar for bonds they bought for the Northwestern Railroad.

64 37 x Q. Is that positively true of other railroad companies who obtained State bonds at that time?

A. I can speak for none but my own company. We paid the market prices; never, in any case, did we undertake to put bonds down; and the whole history of the Nashville & Chattanooga Road is that of integrity and honesty and principle from the bottom to the top in everything.

Adjourned to August 13th, at 11 A. M.

AUGUST 13th, 11 A. M. 65

Adjourned to August 18th, 1879, 12 M.

AUGUST 18th, 1879, 12 M.

Cross-examination closed.

Re-direct examination by W. Y. C. HUMES, Esq.

The witness deposed as follows:

During the whole time of my connection with the Nashville & Chattanooga Railroad Company, 66
Northwestern Railroad Company and Winchester and Alabama Railroad Company, I was a resident citizen of Tennessee, and gave my entire time to the business of those roads; I did make all important contracts and payments for them and managed their finances—I received, and controlled and disposed of the State bonds issued to said railroads; those bonds were not generally sold by me personally to purchasers, but were forwarded by me to bankers and brokers in New York, for sale. 67

V. K. STEVENSON.

Subscribed and sworn to before me, this 18th day of August, 1879.

WILLIAM H. DELANCEY,
Notary Public.
Westchester County, acting in New York County under and by virtue of 68
chapter 807, of the Laws of 1873, of the State of New York.

Deposition of Adrian Iselin, Junior.

CIRCUIT COURT OF THE UNITED STATES, 1

WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement Bonds of the State of Tennessee issued to the MEMPHIS & CHARLESTON R. R. Co., 2

vs.

THE MEMPHIS & CHARLESTON R. R. COMPANY *et al.*

Testimony and proofs for final hearing taken on the part of the respondents in the above-entitled suit, under and pursuant to the 67th Rule in Equity, as amended, before William H. DeLancey, Special Examiner, duly appointed herein. 3

No. 52 BROADWAY,
NEW YORK, February 11th, 1880, 1 P. M.

Parties met pursuant to notice.

Present—MR. E. L. ANDREWS, of Counsel for compl'ts.

W. N. Y. C. HUMES, of counsel for resp'ts. 4

5 ADRAIN ISELIN, Junior, a witness produced on the part of the respondents, being first duly cautioned and sworn in the above-entitled suit to testify the truth, the whole truth and nothing but the truth, deposes and says:

Deposition taken subject to all legal objections of both parties.

6 *Direct-examination* by MR. HUMES:

1 Q. What is your name, business and residence?

A. Adrian Iselin, Jr.; banking business, New York City. I was born in the city, and have lived here for thirty-three years.

2 Q. Did Peter Geddes, one of the complainants in this case, call on you and make enquiries or have conversation with you in relation to the Memphis & Charleston Railroad Company purchasing State
7 bonds of the State of Tennessee to pay its debt to the State for bonds loaned to it by the State; if yea, please state as accurately as you can what Mr. Geddes said.

A. Mr. Geddes called very frequently at our our office about Tennessee State matters, and in his conversation several times expressed his desire that the Memphis & Charleston R. R. Co. should pay off its debt to the State of Tennessee, stating that he hoped and expected that when all
8 the R. R's. had paid off, it would be easier for the bondholders to make a settlement with the State, as he feared that as long as any R. R's. were in the market buying State bonds their interest would be to keep the bonds down and prevent a settlement.

3 Q. At what date did the facts you have related in the last answer occur?

A. I cannot recollect the exact date, but think it

was in the last part of the year 1876 or beginning of 9
1877.

4 Q. Was not Mr. Geddes a member of the Committee of Tennessee bondholders at the time?

A. I don't know.

5 Q. Please read Respondents Exhibits 1 and 2 to Calvin A. Stevens' deposition in this case, and say whether Mr. Stevens did not show you the telegram and letter constituting these Exhibits before he sent them to Gov. Porter, and what he said as to his desire to compromise and the figures he was 10
willing to compromise at.

A. Mr. Stevens showed me both the telegram and letter, but not before he sent them to Governor Porter. He brought in a press copy of the telegram, of which I have a very distinct recollection, and said he had just sent it off; I do not recollect what day he showed me the letter, but I think it was within a day or two after he had sent it; in showing me the telegram he said he was perfectly willing to take fifty per cent., and six per cent. in- 11
terest, as that was all he thought the State could afford to pay, and he did not believe in pressing a debtor to pay more than he could afford—or words to that effect; these conversations were in December, 1877.

Cross-examination by MR. ANDREWS:

6 x Q. Are you a member of the firm of A. Iselin & Co?

A. Yes, sir. 12

7 x Q. When did you or your firm commence making purchases of Tennessee State bonds for the purpose of delivering them to the State in connection with the affairs of the Memphis and Charleston Railroad Company?

A. I cannot give the exact date without referring to our books.

13 8 x Q. Please refer to your books and produce the information at the adjourned examination.

A. I will.

9 x Q. Also show from your books how many bonds as aforesaid had been purchased as aforesaid in the last part of 1876, or the beginning of 1877, down to the time of the conversations you have testified to with Messrs. Geddes & Stevens, if any purchases were so made?

14 (Objected to because it assumes a fact not proven, viz.: That the bonds were purchased in the latter part of 1876 or the beginning of 1877 when there is no such proof, and also assumes that the bonds were purchased six months after the Memphis and Charleston Railroad debt was settled.)

A. I can give the dates by referring to the books.

10 x Q. Did not your firm purchase Tennessee State bonds for delivery to the State in connection
15 with the affairs of other Tennessee railroads before its purchases in connection with the affairs of the Memphis and Charleston R. R.; if so, what roads, when and to what amounts—whether as individuals, a firm, or in connection with other individuals or firms?

Adjourned to 12th inst. at 1 P. M.

In answer to cross question 7 the witness now says:

16 We commenced on July 6, 1877.

In answer to cross question 9 the witness now says:

The purchases were all made between the 6th of July and 26th of July, 1877.

In reply to cross question 10 he says:

We did not purchase any before we purchased for the Memphis and Charleston R. R.

11 x Q. Please furnish the date of the contract, if any, with the Memphis & Charleston R. R. Co. or any other person in pursuance of which you made those purchases of bonds?

A. We had no contract with the Memphis & Charleston R. R. or any body else at the time we purchased those bonds.

12 x Q. When was your contract made?

A. It was the date of this tri-partite agreement, August 21, 1877.

13 x Q. At what date did Adrian Iselin & Adrian Iselin, Jr., composing the firm of A. Iselin & Co., make the offer or proposition, if any, to the Memphis & Charleston R. R. Co., or parties acting on its behalf, which resulted in the passage of the resolution of the board of directors of said company of the 31st day of May, 1877?

A. There was no proposition made before that date, so far as I know.

14 x Q. Do you know whether you or your firm got any legal opinion in reference to the rights of parties and substitution bondholders and others under this arrangement for which you purchased these bonds?

A. We did not go into this arrangement without legal advice; we had the opinion of Chas. F. Southmayd.

15 x Q. Had not your firm some years previously sold a large amount of substitution bonds of the East Tennessee, Virginia & Georgia R. R. Co.?

A. Yes, sir.

16 x Q. At what date was your firm furnished with a copy of the resolution of the Memphis & Charleston R. R. Co., passed May 31, 1877, by the officers of that company?

A. I can't recollect that date.

17 x Q. What was the average price of the bonds you purchased for the Memphis & Charleston R. R.?

A. Forty-four.

21 18 x Q. Did you make purchases of Tennessee bonds for similar purposes; if so, when, what amount of bonds and at what prices and for what roads?

A. We purchased from Dec. 6th to Dec. 28th, 1877, ninety thousand dollars Tennessee State bonds, on the order of Mr. E. W. Cole, President of the Nashville, Chattanooga and St. Louis Railway, at prices ranging from 38 to 44; I believe the bonds were used to pay for the Tennessee and Pa-
22 cific Railroad, but I don't know.

19 x Q. At what average price were the substitution bonds of the East Tennessee, Virginia and Georgia R. R. sold?

A. The first sale was at 82½ for one million bonds, by the E. T. & Va. R. R.; I can't give the prices of the rest; I think it was between 82½ and 90.

20 x Q. Did not A. Iselin & Co. sell some of those bonds here or in Europe?

A. They were mostly all sold in Europe; some
23 few were sold here, to a great extent by or through A. Iselin & Co.

21 x Q. At what prices did A. Iselin & Co. sell these bonds?

A. I decline to answer that question.

22 x Q. When did you or your firm make up your minds to enter upon this agreement with the Memphis and Charleston R. R. Co.

A. I cannot give that date.

23 x Q. When did you get the opinion of Mr.
24 Southmayd, to which you have referred?

A. I cannot give that date; I don't see where I could get it.

ADRIAN ISELIN, JR.

Subscribed and sworn to before me, this 12th day of February, A.D. 1880,

WILLIAM H. DELANCEY,
Special Examiner.

I, WILLIAM H. DELANCEY, Special Examiner, 25
duly appointed by the Circuit Court of the United States, for the Western District of Tennessee, to take the testimony and proofs of both parties in the above-entitled suit, in the city of New York, do hereby certify that on the several days named in the deposition hereto annexed I was attended, at my office, No. 52 Broadway, in the city of New York, by the counsel and witness aforesaid; that the said witness was duly sworn in the above-entitled suit and examined, and the deposition was 26
reduced to writing, and read to the witness, and by him subscribed in my presence.

Dated February 12th, A. D. 1880.

WILLIAM H. DELANCEY,
Special Examiner.

27

28

Deposition of W. H. Osborn.

CIRCUIT COURT OF THE UNITED STATES, 1

WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of internal improvement Bonds of Tennessee, issued to the MEMPHIS & CHARLESTON RAILROAD COMPANY, 2

vs.

THE MEMPHIS & CHARLESTON RAILROAD COMPANY *et al.*

Testimony and proofs for final hearing on the part of the respondents, taken 3 before William H. De Lancey, Special Examiner, duly appointed herein, under and pursuant to the 67th Rule in Equity, as amended.

NEW YORK, February 13, 1880.

Parties met pursuant to notice.

Present.—Mr. W. Y. C. HUMES,
For Respondents. 4

MR. L. E. ANDREWS.
For Complainants.

WILLIAM H. OSBORN, a witness produced on the part of the respondents, being first duly cautioned

5 and sworn in the above-entitled suit to testify the truth, the whole truth and nothing but the truth, deposes and says:

(Deposition taken subject to all legal objections of both parties.)

Direct examination by Mr. HUMES:

1 Q. What, if any, relation do you hold to any of the railroads of Tennessee, and if yea, how long have you held the same?

6 A. I was one of the Purchasing Committee that purchased the Mississippi Central Railroad, under a Decree of the Federal Courts in Tennessee and Mississippi.

2 Q. Do you know Peter Geddes; if so, how long have you known him?

A. Yes; I know him very well; have known him perhaps ten years.

3 Q. Did you ever have any conversation with him touching the Tennessee State Bonds, and the

7 settlement of the purchasers of the Mississippi Central Railroad with the State; if yea, when did these conversations occur; and what did he say about such settlement?

A. We purchased nearly twelve hundred bonds, and when we had probably two-thirds in hand I told Mr. Geddes we had bought the bonds and intended to buy the whole amount for delivery to the State, at which he seemed gratified, from the fact that every bond paid off diminished the State debt

8 to that extent.

4 Q. Did you borrow from Mr. Geddes any State bonds to make up the amount to deliver to the State?

A. No; I did not borrow any from him.

5 Q. Did you apply to him to lend you bonds; if yea, what did he say when you made this application?

A. Towards the close of our purchases of State 9
bonds, and, I believe, when the State officer was here, we decided not to use past due coupons, of which there were fifty or sixty thousand dollars in excess upon the bonds, but to buy from forty to sixty bonds, so as to pay bond for bond. There were no bonds offering in the market for a day or two, and I asked Mr. Geddes if he would lend me some bonds. Mr. Geddes said, to the best of my recollection, that if the Tennessee bonds were his personally he would do so with pleasure, but that 10
his block of bonds were the property of George Smith, Esq., and that he would prefer not to break bulk in the block if I could get along without it, or words to this effect. I succeeded in purchasing the bonds a day or two afterwards from other parties.

6 Q. What demand, or urgency, if any, did the State authorities bring to bear upon the purchasing committee to induce them to this settlement?

A. We bought the road from Canton, Miss., to the Ohio River, knowing that the portion of the line 11
lying within the confines of the State of Tennessee was in possession of the State authorities. The State Receiver held on with a close grip; it was too good a thing to give up; at any rate persuasion would not do it. We all knew that we could not make any money out of the whole line unless we got that piece out of the hands of the State. They understood our trouble just as well as we did without feeling the pain, and intensified it by taking our engineers and train men off the train at the north 12
boundary of Tennessee, having run only twenty-seven miles, and then we had to have a new set waiting at the south line of Tennessee, where their men got off, thus firing at us at both ends. I had no time to call upon the honorable gentleman at Nashville, but as a railroad manager I knew that we were day by day ground between two millstones,

13 and they would not let up unless we paid the debt and got the State lien discharged. The necessity was so exigent that we borrowed the money for the purpose, and got the road relieved from the encumbrance, and free from every recorded lien north of the south line of Tennessee.

7 Q. Did you make use of the acts of 1869 and '70 to get an assignment of the State lien to support bonds of the company issued to obtain the necessary funds?

14 A. We paid in 1,199 bonds, and we issued 1,199 bonds, and each bond bears an endorsement, certified by the Controller, transferring the lien of the State to the bond, as follows:

"STATE OF TENNESSEE, COMPTROLLER'S OFFICE.

I certify that the Chicago, St. Louis and New Orleans Railroad Company has this day liquidated the indebtedness of the Mississippi Central Railroad Company to the State of Tennessee for State bonds,
15 issued pursuant to law under the statutes of said State, to establish internal improvements, and that this bond is substituted for the same amount of indebtedness of the said railroad company to the said State, and the holder of the said bond is hereby subrogated to and secured by the lien held by said State, and to all other rights and remedies reserved by the State in the statutes upon the railroad and property of said Mississippi Central Railroad Company. This bond is one of eleven hundred and
16 ninety-nine bonds, and is executed and issued by virtue of law, takes the place of a bond of the State of Tennessee, and is a first mortgage bond.

November 28th, 1877.

(Sd.) JAMES L. GAINES,
Comptroller of the State of Tennessee."

8 Q. When was the new company formed; and

when was the mortgage of the company to support the bond you have just explained executed ?

A. The Chicago, St. Louis and New Orleans Railroad Company was formed on the 7th day of November, 1877, and the mortgage executed on the 8th November, 1877, and it was registered in each county on the line of the road as soon as practicable.

(Mortgage filed herewith and marked Respondent's Exhibit No. 1. W. H. De. L.' Sp'l Ex'r.)

(Receipt and certificate of the Governor and Secretary of State of Tennessee, also herewith filed, marked Respondents's Exhibit No 2. W. H. De. L., Sp'l Ex'r.)

9 Q. Did you sell those company substitution bonds in open market, on the faith of this assignment of the State lien and the mortgage just exhibited ?

A. Yes ; they sold at 10 to 15 per cent more than the market price of the other first mortgage bonds secured by the same mortgage in 1878.

Cross-examination by MR. ANDREWS :

10 x Q. How many of the Tennessee State Bonds delivered to the State, as you have certified, were of the numbers issued by the State to your railroad company ?

A. I don't know, and never had any occasion to inquire.

11 x Q. Please produce from your books the numbers of the bonds so delivered ?

A. I will endeavor to do so upon the return of our Secretary, now absent.

12 x Q. Were you not aware that in a suit that was pending in reference to the Mobile & Ohio Rail-

road, the question was presented as to the lien of the Tennessee State Bonds upon the railroad to which they were issued?

A. I read the newspapers and may possibly have read this, like other daily news. If this question has any legal bearing upon the question at issue, I wish to state that I have found from experience that this layman knows very little of law questions.

13 x Q. Did you not learn anything in reference to the lien of the State bonds from Mr. Geddes?

A. My esteemed friend Mr. Geddes never began to moot the right of bondholders to crucify railroads until he and his brother bondholders were defeated in the Tennessee Legislature a year or two after we settled with the State.

14 x Q. Did you go into this substitution scheme without any legal advice; and if you had such advice was it in writing or oral?

A. The counsel of the Purchasing Committee was Hon. John A. Campbell, formerly Judge of the U.S. Supreme Court; and the Hon. James Emott of New York. Steps of this character are seldom taken without the advice of counsel, and I suppose we had a great many consultations on that subject. I am not certain that we have any written opinion on this subject, confined expressly to this subject.

15 x Q. Was not an opinion of Judge Campbell furnished in writing upon this subject?

A. I have no doubt that I asked Judge Campbell, either in writing or verbally, if we could have the substitution of the State of Tennessee; and that we were safe in paying out a large sum of money to secure this right; and that when he and Judge Emott prepared the papers and documents for my signature I executed them.

16 x Q. Did you not have these substitution bonds placed on the New York Stock Exchange after the commencement of these suits of Stevens *v.* the Chi-

cago, St. Louis & New Orleans Railroad Company, 25
and others now pending?

A. The application to the Stock Exchange bears date April the 21st, 1879; the Tennessee Lien Bonds were sold previously.

17 x Q. Did you ever hear of any legal opinion to the contrary of the views of Judge Campbell on this question?

A. I have heard legal opinions, but whether they were based upon actual business I did not know, and therefore I only attached importance to such 26
an opinion as was based upon actual business.

18 x Q. Did you not hear of the opinion of Charles O'Conor?

A. I have seen it.

19 x Q. What was the lowest price you paid for the Tennessee State Bonds purchased, as you have testified, and also the average price?

A. I don't remember, but may ascertain from the books; but I decline to furnish it, as the books referred to are those of the Illinois Central R. R. Co. 27

(Complainant's counsel requests witness to produce the same.)

(Witness declines, unless ordered by the Court to do so.)

Cross-examination suspended.

Re-direct:

20 Q. At what period or year did you sell the 28
Substitution Bonds of the Company?

A. We sold them at the close of 1877, and during 1878, except $100,000 sold in 1879; ten hundred and ninety-nine thousand were sold in 1877 and 1878, and $100,000 in 1879, in November.

21 Q. In answer to cross-question 13, do you not intend to say that Mr. Geddes did not begin to as-

29 sert in your hearing that a lien existed in favor of State Bonds on Railroads to which they were issued?

A. Yes; that was the time when he began to talk to me on that subject.

Re-cross:

22 x Q. To whom were the subrogated bonds sold in 1877 and 1878?

A. To five or six parties; I can get their names
30 from the books; to Mr. Sturges, Mr. Cutting, the Illinois Central Company, Sidney Webster, E. H. Harriman & Co., and others.

23 x Q. Are not the Mr. Sturges and Mr. Cutting you have referred to directors of the Illinois Central R. R. Co.?

A. Yes.

24 x Q. Does not the Illinois Central R. R. Co. own a majority of the stock of the Chicago, St. Louis & New Orleans R. R. Co.?

31 A. Yes.

25 x Q. You were also a purchaser of these bonds?

A. I hold some of these bonds which I purchased through brokers.

26 x Q. You have referred to the claims of the Tennessee State bondholders as not presenting any ground of right, or any obstacle to the carrying out the substitution scheme; please explain these words contained in the recital of the second mortgage of the Mississippi Central R. R, Co., and state what
32 notice you derive therefrom of the position of the State bonds of Tennessee: "And whereas, the State of Tennessee advanced to said company five hundred and seventy-four thousand dollars of its six per cent. bonds to aid in constructing that part of said company's road between the northern boundary of the State of Mississippi and the city of Jackson, in Madison County, Tennessee; which bonds consti-

tute a first lien on that part of said company's road and equipments within the State of Tennessee." Are you not President of the Chicago, St. Louis & New Orleans Railroad Company; is not the Mississippi Central a part of the line of road owned by that company; are there not bonds outstanding under the mortgage from which the above extract was taken? 33

(Objected to, because the first sentence assumes that the witness has stated a fact which he has not. Secondly, the question seeks from the witness his opinion as to the construction of an instrument not in proof, and is irrelevant and incompetent.) 34

A. I am President of the Chicago, St. Louis & New Orleans R. R. Co., of which the old Mississippi Central forms a part; and there are bonds outstanding of that mortgage. The extract read is in the mortgage. I have known of that mortgage for five years; have examined it frequently, and have consulted at least six able lawyers on the subject of this second mortgage. No one of them ever understood it. Amongst other anomalies is the authority conferred upon the President to make the date of maturity of any one bond, by endorsement, at his pleasure, or the time or place of payment at his pleasure; and through that power, some of the bonds were made payable next day. I shall not attempt to construe any part of this perplexing mortgage. As to the particular question you have asked, I have never studied the paragraph or had my attention called to it before. 35 36

The witness further says: That on examination I find that we borrowed the bonds of the Illinois Central Railroad, and paid them in substitution bonds at a later date.

37 27 x Q. Did you not ask Mr. Geddes to buy some of the substitution bonds?

A. I think it very probable that I did.

28 x Q. Did he not refuse to purchase them on the ground that the Tennessee State bonds were a lien on the road?

A. He refused to buy them. I believe his chief objection was that he had as many Southern securities as he wanted; he had got through with those States down there. He has indulged in a good deal
38 of conversation in relation to the lien of the State, but at which time he put forth his lien, or at which time he expressed his anxiety to get out of Southern securities, I can't tell.

29 x Q. Did not Mr Geddes tell you about the Mobile and Ohio case, and its involving the question of the lien of the State bonds on the railroads?

A. Yes; he has talked about the Mobile and Ohio case, and a great many other cases affecting the bond question.

39 30 x Q. Did you not show Mr. Geddes Judge Campbell's opinion?

A. I don't remember to have done so. If Mr. Geddes remembers my showing him any of Judge Campbell's letters, it is undoubtedly so.

31 x Q. Could the Tennessee section of your road pay this claim of the bondholders in case of their success?

A. If it was managed by the governor and other officers of Tennessee as it was before, it undoubted-
40 ly could. It was managed as local road; they charged arbitrary rates.

32 x Q. Do I understand you that there are no mortgages or encumbrances upon this Tennessee section other than this substitution mortgage?

A. The foreclosure proceedings wiped out the old mortgage of the old company, and I am informed there is no recorded mortgage in Tennessee.

Re-direct:

33 Q. What did you say of Mr. Douglas' opinion in reply to verbal interrogatories of complainant's counsel?

A. John M. Douglass was the general solicitor and president of the Illinois Central Company for many years. That company owned a large amount of the consolidated bonds in default. At the instance of the directors, Mr. Douglas went south, and examined the property and procured copies of all recorded papers, and upon his return enumerated, among other points to be attained by the purchase of the road, he could pay off the Tennessee bonds and discharge the debt, purchasing the Tennessee State bonds at a discount.

Re-cross:

34 x Q. Was not that advice that you should purchase the Tennessee State bonds that were liens on your road?

A. No, sir; Mr. Douglass was well assured we had the right to purchase any bonds of that State.

35 x Q. Has not Mr. Douglas lately, and since reading Charles O'Conor's opinion, stated that the Tennessee State bondholders had liens upon the railroads, and that in his judgment they would succeed in enforcing them in these suits?

A. I have not seen Mr. Douglas but once for several years; have had no communication with him on this subject, and never heard the effect of O'Conor's opinion on him.

Adjourned to further notice.

45 NEW YORK, February 18, 1880.

Cross-examination continued:

36 x Q. Have you not purchased the Chicago, St. Louis & New Orleans Tennessee lien bonds since the commencement of this suit?

A. I purchased one for a poor widow last month; I purchased another for another widow the month before; I bought 20 for myself a few months ago; I bought 10 as a guardian for a trust fund.

46 37 x Q. Did you not say to Mr. Peter Geddes that at any rate your Company was very fortunate to have so few of the numbers of the Tennessee Bonds issued to your road now outstanding?

A. Yes; Mr. Geddes' affliction and grief on his ownership of an immense number of Tennessee Bonds, which cost him about par years ago, made our burden light in comparison.

38 x Q. Are there any bonds outstanding of the consolidated mortgage of the Mississippi Central
47 Railroad Company, executed May 1, 1872; and how many were issued?

A. The mortgage was for $8,000,000, and $3,000,000 were issued; the mortgage was foreclosed, and the property is now held under that foreclosure.

39 x Q. Are you not an officer of the Chicago, St. Louis & New Orleans Railroad Company, which so holds the property?

A. Yes; the President.

40 x Q. Have you not read that mortgage and the
48 following clauses thereof: "Whereas the Mississippi Central Railroad Company has now outstanding bonds and obligations in the aggregate amounting to four millions and six hundred and twenty-nine thousand dollars, which constitute a lien upon the whole or some portions of its railroad and property, described as follows * * * :

One million two hundred and seventy-nine thous- 49
and dollars for bonds advanced to it by the State of Tennessee which the Company is bound to pay and which are a lien upon its property by virtue of an act of the Legislature of Tennessee, entitled "An act to establish a system of internal improvements in this State," passed the 11th day of February, A. D. 1852?

A. We did not execute that mortgage; the mortgage was executed by H. S. McComb, President of the Mississippi Central Railroad Company; we are 50
now entirely satisfied that the recitals in that mortgage were incorrectly made, and have instituted proceedings in the State of Mississippi, and also in this Second Circuit, calling upon H. S. McComb, among other things, to explain that recital; and particularly to show what was done with the large amount of Tennessee State Bonds which, according to the statutes, could only be applied to the construction of the road; when these suits terminate I hope to be able to answer your question. 51

41 x Q. Did not your Company obtain the opinion of William Tracy, Esq., of the New York bar, in reference to the validity of the consolidated mortgage, and did he not in that opinion refer to the act of the Tennessee Legislature, passed on February 3, 1871, as containing the following words: "That nothing herein contained shall be construed in any way to impair or diminish the priority of the State's lien upon the property which may be mortgaged, as herein provided for, and, expressly, bonds which 52
have been or hereafter may be given by the State, shall be and remain a first lien on all the property of every description of the railroad company to which such bonds may have been given?

A. Our company, the Chicago, St. Louis & New Orleans Railroad Company, did not ask Mr. Tracy's opinion; there was no reference to that mortgage

53 after the purchase of that property subject only to priorities.

42 x Q. Were not the proceedings for the consolidation of the constituent companies into the New Orleans, St. Louis & Chicago Railroad Company delivered to the Secretary of State of Tennessee on the 10th of July, 1874?

A. The records and books of the old company are in the possession of H. S. McComb; we are demanding the same in three different lawsuits; I have not
54 personal or official knowledge of the facts you ask for.

43 x Q. When did the Chicago, St. Louis & New Orleans Company borrow the Tennessee State Bonds from the Illinois Central Railroad Company?

A. Early in November, 1877.

Re-direct:

44 Q. What did you mean by saying that the State of Tennessee made you pay off the State lien?

55 A. We had to operate the road from Cairo to New Orleans as an entirety; we applied on the road beyond the confines of the State all the earnings and a large amount of money for the purpose of improving the road and making it safe for life and property. But the State authorities would not pursue this course, and took the surplus, beyond the payment of employes, into the State Treasury, keeping the road in a very wretched condition physically; therefore as railroad men we could not operate that bad piece
56 in the middle of it; the State of Tennessee practically had the power to make us pay the State, and they did so.

W. H. OSBORN.

Subscribed and sworn to before me, this 18th day of Feb., 1880.

WILLIAM H. DE LANCEY,
Special Examiner.

I, WILLIAM H. DE LANCEY, Special Examiner, 57
duly appointed by the Circuit Court of the United States for the Western District of Tennessee, to take the testimony and proofs of both parties in the above-entitled suit, in the city of New York, do hereby certify that on the several days named in the deposition hereto annexed, I was attended at my office, No. 52 Broadway, in the city of New York, by the counsel and witness aforesaid. That the said witness was duly cautioned and sworn in the above-entitled suit and examined, and the deposition was 58
reduced to writing and read to the witness, and by him subscribed in my presence, and that the Exhibits hereto annexed, marken "Respondent's Exhibit No. 1, W. H. D. L., Sp'l Ex'r," and "Respondent's Exhibit No. 2, W. H. D. L., Sp'l Ex'r," were introduced in evidence in said cause during the taking of said deposition.

Dated Feb. 18, 1880.

WILLIAM H. DeLANCEY.

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60

61 RESPONDENTS' EXHIBIT, NO. 1.
W. H. D. L., Spl. Exr.

CHICAGO, ST. LOUIS & NEW ORLEANS R. R. Co.
FIRST MORTGAGE
FOR
$13,000,000.
TO

62 A. SCHREIBER,
JAMES FENTRESS,
LEWIS V. F. RANDOLPH } *Trustees.*

NOVEMBER 8TH, 1877.

THIS INDENTURE, made this 8th day of November, Anno Domini one thousand eight hundred and seventy-seven, between the Chicago, St. Louis and New Orleans Railroad Company, of the first part;
63 the New Orleans, Jackson and Northern Railroad Company, of the second part; the Central Missippi Railroad Company, of the third part, and Adolph Schreiber, of the City of New Orleans, in the State of Louisiana, James Fentress, of Bolivar, in the State of Tennessee, and Lewis V. F. Randolph, of the City of New York, in the State of New York, Trustees, of the fourth part:

Whereas, A certain corporation, known as the
64 New Orleans, Jackson and Great Northern Railroad Company, organized under the laws of the States of Louisiana and Mississippi, heretofore owned and operated a certain railroad, extending from the City of New Orleans, in the State of Louisiana, to Canton, in the State of Mississippi, together with a branch thereof known as the Kosciusko Branch, from a point at or near Durant, in the State of Mis-

sissippi, to Kosciusko, in the said State of Mississippi, and with the right to construct and operate certain other branches and extensions, with the depot grounds, buildings, machinery and other property to said railroad appertaining, being part of the railroad and property hereby intended to be mortgaged and conveyed; 65

And whereas, The said New Orleans, Jackson and Great Northern Railroad Company, on or about the twelfth day of June, 1856, mortgaged and conveyed in trust to one James D. Denegre, its road aforesaid, made and to be made, from the City of New Orleans, in the State of Louisiana, to Canton, in the State of Mississippi, with the appurtenances, to secure the payment of certain of its corporate bonds to the extent of three million of dollars; 66

And whereas, Certain of such bonds were afterwards issued under said mortgage, two thousand nine hundred and forty-one, of which are now outstanding and unpaid, amounting to two millions nine hundred and forty-one thousand ($2,941,000) dollars; 67

And whereas, Subsequently to the making of said first mortgage, to wit: On the first day of October, 1860, the said New Orleans, Jackson and Great Northern Railroad Company, for the purpose of securing the payment of an additional and subsequent issue of its corporate bonds, to a further amount, not exceeding three millions of dollars, did also mortgage and convey in trust to the said James D. Denegre its line of road, made and to be made, from the City of New Orleans to Canton, in the State of Mississippi, and from Canton to Aberdeen, in said State of Mississippi, together with the appurtenances; 68

69 *And whereas*, Certain of such bonds were afterwards issued under said second mortgage, fifteen hundred of which are now outstanding and unpaid, amounting to one million five hundred thousand ($1,500,000) dollars;

And whereas, Afterwards the said New Orleans, Jackson and Great Northern Railroad Company failed to pay the coupons or interest warrants upon said first and second mortgages, and certain of the
70 said coupons, with all liens, rights and equities attaching thereto under said mortgages, were purchased by third parties, to the amount of three hundred and forty thousand ($340,000) dollars of such coupons, due and unpaid upon the said first mortgage, and of one hundred and sixty thousand ($160,000) dollars of such coupons, due and unpaid upon the said second mortgage, of said New Orleans, Jackson and Great Northern Railroad Company.

71 *And whereas*, The said New Orleans, Jackson and Northern Railroad Company, party hereto of the second part, on the fifteenth day of August, 1877, made an issue of its corporate bonds, known as Matured Coupon Bonds, to the extent of five hundred thousand dollars, to provide for the postponement of the payment of the said three hundred and forty thousand dollars ($340,000) coupons due and unpaid upon the first mortgage of the New Orleans, Jackson and Great Northern Railroad Company, and of
72 the said one hundred and sixty thousand dollars ($160,000) coupons due and unpaid upon the second mortgage of the said New Orleans, Jackson and Great Northern Railroad Company; and to further secure said matured coupon bonds, did also mortgage and convey in trust to William H. Gebbard and Lewis V. F. Randolph, both of the city of New York, its line of road, made and to be made,

from the city of New Orleans to Canton in the State of Mississppi ; 73

And whereas, all of such coupons are still unpaid, and said Matured Coupon Bonds are now outstanding, to said amount of five hundred thousand dollars ;

And whereas, a certain corporation known and designated as the Mississppi Central Railroad Company was chartered and incorporated by the Legislature of the State of Mississippi, by an act passed 74
on the tenth day of March, 1852, for the purpose of building and operating a railroad from the town of Canton, heretofore mentioned, in said State of Mississippi, to the north line of said State, and said corporation proceeded in the construction of said railroad ;

And whereas, afterwards, a certain other railroad corporation, known and designated as the Mississippi Central and Tenessee Railroad Company, was 75
chartered and incorporated by an act of the Legislature of the State of Tennessee, passed on the thirtieth day of November, 1853, and was authorized by said act to consolidate and form one corporation with the Mississippi Central Railroad Company, hereinbefore mentioned ;

And whereas, the said State of Tennessee, under and by virtue of its Generai Internal Improvement Laws, and of other acts amendatory thereof and 76
supplementary thereto, thereto, theretofore passed and then in full force, loaned to the said Mississippi Central and Tennessee Railroad Company, or advanced for its benefit Bonds of the State of Tennessee to the aggregate amount of five hundred and seventy-four thousand ($374,000) dollars, by virtue of which Bonds and upon the issuance thereof

77 under and pursuant to the statutes authorizing such issuance of Bonds, the said State of Tennesssee became invested, without deed from the Railroad Company, with a lien in the nature of a mortgage upon the entire Road built or to be built by said corporation in the State of Tennessee, with all its equipments and appurtenances, prior to any mortgage made or to be made by the said corporation, as security to indemnify and save harmless the said State, on account of the issuance and for the pay-
78 ment of the principal and interest of its said Bonds so issued to said corporation ;

And whereas, afterwards and in pursuance of certain acts of the Legislatures of the States of Mississippi, Tennessee and Kentucky, the said Mississippi Central and Tennessee Railroad Company and the said Mississippi Central Railroad Company were consolidated and made into one corporation, under the name of the Mississippi Central Railroad Company,
79 by the agreement and consent of the Stockholders thereof, and were authorized to continue and complete the construction of the Railroad from Canton in the State of Mississippi aforesaid, through the States of Tenessee and Kentucky, to a point on the Ohio River opposite to Cairo in Illinois, and to operate the same, and the said corporation, thereafter known as the Mississippi Central Railroad Company, did proceed to construct and to operate said Railroad ;

80 *And whereas*, under and by virtue of the acts aforesaid, and certain other acts of the Legislature of the State of Tennessee, certain other Bonds of said State to the amount of $550,000, were issued to the said Mississippi Central Railroad Company, for the purpose of aiding in the construction and completion of the said Road in the State of Tennessee, and previous to the construction and

completion thereof, and under and by virtue of the 81
General Internal Improvement Laws, and the acts amendatory thereof and supplementary thereto, pursuant to which said bonds were issued, a lien was reserved to the said State upon the entire road in the State of Tennessee—with all its superstructure, equipments and appurtenances, and all property owned by the Company, and all depots and stations, and assets attached thereto, lying within the limits of said State, in the nature of a mortgage lien, without deed, prior to the lien of any mort- 82
gage executed or to be executed by the said Company, to indemnify and save harmless the said State of Tennessee, for the issuance and against the payment of the principal and interest of the said last mentioned amount of five hundred and fifty thousand dollars of its Bonds, so as aforesaid issued to or for the benefit of the said Mississippi Central Railroad Company;

And whereas, said Mississippi Central Railroad Company having been made to pay and re-imburse 83
to the said State of Tennessee, a certain amount of the interest which had accrued, and which the State had paid upon its Bonds so as aforesaid issued to the Mississippi Central and Tennessee Railroad Company, certain acts were passed by the Legislature of the State of Tennessee, by which the balance due from the Mississippi Central Railroad Company for such interest, having been paid by the said State of Tennessee by issuing other of its Bonds, was charged as principal, and in all respects 84
the said State was entitled by virtue of the payment thereof, and the issuance of said Bonds therefor, to the same rights and liens for the same which were created by the acts authorizing the original issue of the Bonds to said Railroad Companies; which interest, so converted into principal, and for which the said State of Tennessee, became and is entitled to a

85 like first lien upon the Railroad and property of the Mississippi Central Railroad Company within said State, amounts to seventy-five thousand one hundred and eighty ($75,180) dollars.

And whereas, by virtue of the payments or advances aforesaid, the State of Tennessee and its assigns, as hereinafter mentioned, became entitled to, and does hold a first and paramount lien in the nature of a first mortgage upon all the property which
86 was of the said Mississippi Central Railroad Company, so called after the consolidation aforesaid, within the said State of Tennessee, to the extent and amount of one million one hundred and ninety-nine thousand one hundred and eighty ($1,199,180) dollars besides interest;

And whereas, by an Act of the Legislature of said State of Tennessee, passed on the twenty-fifth day of February, 1869, and by other acts amendatory thereof and supplementary thereto, it was enacted,
87 among other things, that the respective Railroad Companies, or either of them that had created indebtedness to the said State, were authorized to repay any amount of the principal of such indebtedness in the Bonds of the State, and that any such Railroad Company repaying any such indebtedness, might issue Bonds to an equal amount with the Bonds of the State paid and delivered up as thereby provided, which said Bonds so issued in lieu of any equal amount of said State Bonds, should
88 be certified by the Comptroller of said State, and should be and possess a lien *pro rata* in amount and of equal validity and effect with the State indebtedness upon such Railroad, and all its property within the State of Tennessee; and farther, that any person or persons, with the consent and approbation of any Railroad Company which should be indebted to the State of Tennessee, and

upon whose property the State of Tennessee might 89
hold a lien, might pay the said State debt, so far as the State is concerned, in the Bonds of the State, or any coupons of Bonds at par, and the person or persons so paying the debt of such Railroad Company, with the consent of such Company, should be entitled to have and hold all the lien or liens which the State of Tennessee had or has, upon said Railroad or its property, and the same right and power to enforce the same which the State of Tennessee had ; 90

And whereas, in and by a Decree of the Circuit Court of the United States for the District of Tennessee, made and entered at Memphis, on the sixth day of January, 1877, in a suit in Chancery commenced by the Trustees of the consolidated mortgage of the Mississippi Central Railroad Company hereinafter mentioned, for the foreclosure of said mortgage, and for authority and direction to sell and convey the Railroad and franchises of the said Mississippi Central 91
Railroad Company, in satisfaction of said consolidated mortgage, it was by the said Court ordered, adjudged and decreed, that the said Trustees and their assigns are entitled, as representing the said Mississippi Central Railroad Company, to settle the claim and take and receive a transfer of the lien of the State of Tennessee ;

And whereas, the said Chicago, St. Louis and New Orleans Railroad Company has become the as- 92
signee and grantee of said Trustees in said decree named, and of all their rights and privileges in that behalf, and also the successor as hereinafter stated of said corporation known as the Mississippi Central Railroad Company, and of all its powers, rights, privileges and franchises, with the right in case of payment of said Tennessee Bonds to issue and sub-

93 stitute its own bonds with all the liens and rights held by the State of Tennessee ;

And whereas, the said party of the first part by virtue of the premises, is invested with the rights, powers, faculties and property of the Trustees aforesaid, under said deed of trust, and the decrees of the said Court above mentioned, and also possessed of the property described in said deed and decree subject to the mortgages and liens thereon, and by
94 reason thereof is interested to settle with the State of Tennessee the debt created by the advance of its said Bonds in the manner authorized by said State; and, in order to maintain and continue the lien created by the acts aforesaid, and reserved and held by the State of Tennessee on said property within said State, so as to enable said Company to effect such settlement, the said Chicago, St. Louis and New Orleans Railroad Company, by Resolution of its Board of Directors, duly consented, and has filed
95 such consent, executed under its corporate seal, in the office of the Treasurer of said State of Tennessee, that the said parties of the fourth part,—as Trustees for the Bonds to be issued in substitution for said Tennessee State Bonds, as hereinafter set forth, or the purchasers and holders of such bonds, —may make payment of such State Bonds to the State of Tennessee, according to said Statutes, and may receive agreeably to the same a transfer of the lien of said State, and so become invested as author-
96 ized by said acts, with the first lien upon all said Railroad and property in the State of Tennessee, theretofore held by said State as aforesaid, and have and hold all the liens of said State and all right and power to enforce the same, which the State of Tennessee has or had, so that the holders of said Bonds and the said Trustees in their behalf shall be placed in the same position in all respects and have all the

rights, and the same power to enforce the same, 97
which the State of Tennessee has or had before such transfer;

And whereas, the said Mississippi Central Railroad Company, for the purpose of improving and completing its Line of Railroad, on or about the first day of November, 1854, made and executed a mortgage or deed of trust to Charles Butler, Azariah C. Flagg and Jacob Thompson, to secure the payment of its corporate Bonds to an amount not to exceed 98
one million three hundred and fifty thousand ($1,350,000) dollars, whereby it mortgaged and conveyed all its Railroad constructed, or to be constructed in the State of Mississippi, with its property and appurtenances;

And whereas, Bonds were issued under said Mortgage, and are now outstanding and unpaid to an amount not precisely and accurately known, but not exceeding nine hundred and ninety-two thou- 99
sand ($992,000) dollars;

And whereas, subsequently to the making and execution of said first mortgage, to wit, on the first day of November, 1865, the said Mississippi Central Railroad Company, made and executed a second mortgage or deed of trust to Jacob S. Rogers, M. P. Mathison and William L. Sharkey, for the purpose of securing the payment of an additional issue of its corporate Bonds, to an amount not to exceed two millions ($2,000,000) of 100
dollars;

And whereas, Bonds have been issued under said second mortgage, and are now outstanding to an amount which is not definitely accurately known and ascertained, but which does not exceed one million nine hundred and ninety-seven thousand ($1,999,000) dollars;

101 *And whereas*, afterwards, the said Mississippi Central Railroad Company failed to pay certain coupons for interest upon its second mortgage aforesaid, and certain of said coupons were purchased and are now held by third parties, and the holders of certain other of said coupons agreed to extend the time for payment thereof, for which agreement of extension and for the preservation of which rights, certain scrip was issued by said Mississippi Central Railroad Company, which said coupons
102 and scrip and other debts alleged to be liens upon so much of the railroad and property of said corporation as is covered by said second mortgage, amount in all to not more than one million two hundred and twenty-one thousand ($1,221,000) dollars, the precise total thereof not being accurately or definitely known;

And whereas, afterwards, the New Orleans, Jackson and Great Northern Railroad Company, herein-
102 before mentioned, made and executed a certain other mortgage or deed of trust, being a consolidated mortgage upon its entire railroad and property, under which certain bonds were issued; and the said Railroad Company having made default in payment of interest upon its said last mentioned bonds, and thereupon the principal thereof, by virtue of the terms and conditions thereof, and of the mortgage or deed of trust securing the same, having become absolutely and entiely due and payable,
104 such proceedings were had for the foreclosure of said mortgage, that the railroad property, rights and franchises of the said New Orleans. Jackson and Great Northern Railroad Company, were afterwards sold under and by virtue of the power in said mortgage or deed of trust contained, and of a decree in that behalf rendered by the Circuit Court of the United States for the District of Louisiana, and

purchased by and on behalf of certain holders of the 105
bonds of said Company, issued under said consolidated mortgage;

And whereas, afterwards, the said bondholders and purchasers, under and by virtue of statutes of the States of Mississippi and Louisiana, did organize and incorporate themselves by the corporate name and title of the New Orleans, Jackson and Northern Railroad Company, and received a deed and transfer of said Railroad, and became the 106
owners under and according to the statutes aforesaid, of all the rights, franchises, railroad, rights of way, superstructure and other property which had been of the New Orleans, Jackson and Great Northern Railroad Company, with all privileges and immunities appertaining to the property or franchises so sold and purchased, and all powers and franchises of said Company in as full and complete manner as the said New Orleans, Jackson and Great Northern Railroad Company was entitled to the 107
same by law, and as fully and perfectly as if the said New Orleans, Jackson and Northern Railroad Company had been granted a charter of incorporation in the very words of the act or acts under which the New Orleans, Jackson and Great Northern Railroad Company existed, owned and operated its said railroad, and held and exercised its rights, privileges and franchises;

And whereas, also, the said Mississippi Central 108
Railroad Company, hereinbefore mentioned, for the purpose of completing and extending its railroad to the Ohio River, made and executed a certain consolidated mortgage or deed of trust on or about the first day of May, one thousand eight hundred and seventy-two, under which consolidated mortgage or deed of trust, certain bonds or obligations

of the said Mississippi Central Railroad Company were issued :

And whereas, the said Mississippi Central Railroad Company afterwards failed and made default in the payment of its coupons for interest upon said consolidated mortgage bonds ; and thereafter, according to the provisions of said bonds, and of said mortgage or deed of trust securing the same, such proceedings were had that under and by virtue of the power created and conferred by the said mortgage or deed of trust, and in pursuance of decrees rendered in the Circuit Courts of the United States in the Districts of Tennessee, Mississippi and Kentucky, all the property described in said decrees, and in the deed of trust aforesaid, being the railroad of the said Mississippi Central Railroad Company, extending from Canton in the State of Mississippi, through the States of Mississippi, Tennessee and Kentucky, to a point on the Ohio River opposite Cairo, with all franchises, rights, and appurtenances thereto belonging, and all the franchises, rights and privileges of the said corportion were sold by the trustees in said mortgage or deed of trust mentioned, under the direction of a Master appointed by the Court, and purchased by certain holders of the bonds issued under the said mortgage ;

And whereas, afterwards the said bondholders and purchasers, under and in pursuance of acts of the Legislatures of the States of Mississippi, Tennessee and Kentucky, organized and became incorporated for the purpose of holding, owning and operating the said railroad under the name, title and designation of the Central Mississippi Railroad Company, and by virtue of the said acts of the Legislatures aforesaid, and of deeds and conveyances, became, and were invested with the absolute title to said railroad and property, real and personal, and the same right to operate the said railroad in the said

States as the Mississippi Central Railroad Company had, and with all rights, privileges and immunities appertaining to the property and franchises so sold and purchased, and granted and conveyed to them, as fully and completely as the said Mississippi Central Railroad Company was, or had been, and with all the rights, privileges, immunities and franchises held by the said Mississippi Central Railroad Company, by or under any acts of the Legislatures of the States aforesaid, as fully and perfectly as if the said Central Mississippi Railroad Company had been granted a charter of incorporation in the very words of the acts under which the Mississippi Central Railroad Company had existed, and claimed and exercised such powers and privileges ;

And whereas, for the better and more convenient operation of the said railroads, and the protection of the parties interested therein, and in the Bonds secured by said prior mortgages thereon, and in order to form one continuous line of railway from the City of New Orleans aforesaid, to the Ohio River opposite the terminus of the Illinois Central Railroad at Cairo, under a single control and ownership, it was determined and agreed to consolidate and unite the said two Railroad Companies known as the New Orleans, Jackson and Northern Railroad Company and the Central Mississippi Railroad Company, which had so as aforesaid become the owners of the said two railroads, together constituting such continuous line from the city of New Orleans to the Ohio River ;

And whereas, an agreement for such consolidation, dated the 7th day of November, A. D. 1877, has been duly executed by the said two corporations, and ratified and assented to by the stockholders thereof (and has become valid, final and effectual in all the States in which the same is authorized and per-

117 mitted by the statutes thereof, and is intended to be perfected, ratified and confirmed in all the States through which the said railroad passes) in order that the said two corporations may become merged and consolidated in the corporation known as the Chicago, St. Louis and New Orleans Railroad Company, the party hereto of the first part;

And whereas, by virtue of said agreement of consolidation, the corporation, party of the first part to these presents, and known as the Chicago, St. Louis
118 and New Orleans Railroad Company, a corporation formed by the union and consolidation of parties of the second and third parts hereto, is intended to own and operate the Railroad so as aforesaid extending from the City of New Orleans, to the Ohio river opposite Cairo, with all branches and extensions thereof, made or to be made, and with all the appurtenance, franchises and rights of way appertaining thereto, which were of the said two corporations so consolidating, or which heretofore belonged
119 to the corporations hereinbefore mentioned, known as the New Orleans, Jackson and Great Northern Railroad and the Mississippi Central Railroad Companies:

And whereas, the said Chicago, St. Louis and New Orleans Railroad Company, and the parties interested in the said line of Railroad, have been advised and have determined that it is expedient and desirable to consolidate and pro-
120 vide for the existing liens upon the said line of road, or the several portions thereof hereinbefore recited, and to provide in addition the means for continuing and completing, and further equipping and perfecting such line of railroad between New Orleans and the Ohio River as aforesaid, and for that purpose the Directors of said Chicago, St. Louis and New Orleans Railroad Company, at a

meeting held on the eighth day of November, one 121
thousand eight hundred and seventy-seven, did pass certain resolutions of the tenor and effect following:

Resolved, That the President and Treasurer of this Company be authorized to execute from time to time, as shall be required to effectuate the purposes of these Resolutions, thirteen thousand Bonds of this Company, to be numbered consecutively from number one to number thirteen thousand inclusive, 122
each Bond to be for one thousand dollars, payable on the first day of November, one thousand eight hundred and ninety-seven, bearing interest at the rate of seven per cent. per annum, payable semi-annally at the office of the Company in the City of New York, and the interest and principal payable in lawful money of the United States of America; that the President be authorized and instructed to secure the payment of said Bonds and interest thereon by a deed of mortgage, and for that purpose to exe- 123
cute and affix the seal of this Corporation, and his signature as President, to a mortgage or deed of trust of the Railroad and franchises of this Company, including all its personal and real estate, and all its property movable and immovable, now owned or hereafter to be acquired, and its rights and franchises in the States of Louisiana, Mississippi, Tennessee and Kentucky to Adolph Schreiber of the City of New Orleans in the State of Louisiana, James Fentress of Bolivar in the State of Ten- 124
nessee, and Lewis V. F. Randolph of the City of New York in the State of New York, as Trustees:

Resolved, That numbers one to one thousand one hundred and ninety-nine inclusive of said Bonds, shall be set apart to provide, under the acts of the State of Tennessee, for and to be substituted for the Bonds of the State of Tennessee, issued to the Mis-

sissippi Central and Tennessee Railroad Company, and the Mississippi Central Railroad Company, to be registered and certified pursuant to said statutes of said State of Tennessee, by the Comptroller thereof, and to be issued to the party or parties paying the lien of the State, or to furnish the means to pay and satisfy said lien, and to be entitled to and in fact become, and as provided by the acts of the State of Tennessee aforesaid, a lien in the nature of a first mortgage upon the property of this Company in the State of Tennessee, the same precisely as is now declared to exist in favor of said State, under and by virtue of the statutes thereof in pursuance of which the loan and advance of State Bonds was made to the Company or Companies, of whose rights and property this Company has succeeded, and with all rights, privileges and liens created by said statutes, and all powers to enforce the same originally residing in said State ;

Resolved, That said Bonds from numbers one thousand two hundred, to four thousand one hundred and forty inclusive, shall be reserved and shall be deposited with said Trustees, and shall be used for the purpose of being exchanged for, or of providing for the purchase or payment of the outstanding first Mortgage Bonds of the New Orleans, Jackson and Great Northern Railroad Company, being two thousand nine hundred and forty-one of said Bonds ;

Resolved, That said Bonds numbered from four thousand one hundred and forty-one to five thousand six hundred and forty inclusive, shall be reserved, and shall be deposited with said Trustees, and shall be used for the purpose of being exchanged for, or of providing for the payment or purchase of the outstanding second mortgage Bonds of the New Orleans, Jackson and Great Northern

Railroad Company, being one thousand five hun- 129
dred of said Bonds;

Resolved, That said Bonds numbered from five thousand six hundred and forty-one, to six thousand one hundred and forty inclusive, shall be reserved, and shall be deposited with said Trustees, and shall be used for the purpose of being exchanged for, or of paying and liquidating, the outstanding and unpaid coupons under said first and second mortgages of said New Orleans, Jackson and 130
Great Northern Railroad Company, and the Matured Coupon Bonds issued to provide for the postponement of the date of payment of the said Coupons, being five hundred of said Bonds;

Resolved, That said Bonds numbered from number six thousand one hundred and forty-one, to seven thousand one hundred and thirty-two inclusive, shall be reserved, and shall be deposited with said Trustees, and shall be used for the purpose of being exchanged for, or cancelling, or providing for 131
the payment or purchase of the outstanding Bonds under the first mortgage of the Mississippi Central Railroad Company, being nine hundred and ninety-two of such Bonds, or so many thereof as shall be needed to cancel and extinguish all of said Bonds, which are outstanding, and are legal and valid obligations;

Resolved, That said Bonds numbered from seven thousand one hundred and thirty-three, to nine 132
thousand one hundred and twenty-nine inclusive, shall be reserved and shall be deposited with said Trustees, and said Bonds or so many thereof as shall be necessary, shall be used for the purpose of being exchanged for, or of providing for the payment and satisfaction of the outstanding Bonds under the second mortgage of the Mississippi Central Railroad

132 Company, which are legal and valid obligations; and none of said Bonds referred to in this or the last resolution. shall be removed from said deposit or used for any other purpose, until the whole of said first and second mortgage Bonds of the said Mississippi Central Railroad Company which are outstanding and valid obligations shall be paid or cancelled;

Resolved, That said Bonds numbered from nine
134 thousand one hundred and thirty to ten thousand three hundred and fifty inclusive, shall be reserved and set apart, and shall be used for the purpose of paying and satisfying the outstanding coupons and scrip, and other liens which may be valid, and prior to this mortgage upon the property, railroad and franchises which were of the said Mississippi Central Railroad Company, until all such liens are cancelled, being one thousand two hundred and twenty-one of said Bonds, or so many thereof as
135 shall be necessary for the purpose of cancelling and satisfying said coupons, scrip and liens;

Resolved, That said Bonds numbered from number ten thousand three hundred and fifty-one to ten thousand eight hundred and fifty inclusive, being five hundred of such Bonds, shall be used and issued to supply the means to take up and pay any remaining prior liens or incumbrances upon the property hereby mortgaged, any deficiency in any of the particular appropriations hereinbefore made,
136 and the general expenses of said trust;

Resolved, That the residue of the Bonds shall be placed in the hands of the said Trustees, and shall be executed by the President of the Company, and certified by the said Trustees only upon expenditures made, or liabilities incurred:

First—In the payment of any coupons now over-

due and not postponed, upon the first and second 137
mortgage Bonds of the New Orleans, Jackson and Great Northern Railroad Company, and upon first mortgage Bonds of the Mississippi Central Railroad Company, not hereinbefore specially provided for; *Second.*—In constructing and improving the line of Railroad of this Company, with its switches, turn-outs, branches, side-tracks and equipments, or for payment of debts, or liabilities already incurred for such construction and improvement; and upon evidence satisfactory being furnished to the 138
said Trustees of the amount required to discharge debts and liabilities incurred, or necessary to incur, in improving, completing and putting the said Railroad in order as a first class railroad, or in procuring additional equipment therefor, they shall deliver to the said corporation, or to purchasers of said bonds so many of the said bonds as they shall deem equivalent to the amount of said expenditures, until the said line from New Orleans to the Ohio river as aforesaid, shall be fully completed 139
and equipped as a first-class railroad, or until the whole number of the said thirteen thousand bonds, after applying such portion thereof as has been by these resolutions specifically appropriated shall have been delivered to the Company or to the purchasers thereof;

Resolved, That the said mortgage to be executed for the security of the said bonds, shall contain the ordinary provisions and conditions, as shall be ad- 140
vised by counsel, and, generally the following covenants and agreements;

First.—That until default this company shall retain the possession and use of the mortgaged premises;

Second.—That this company will pay and dis-

charge all taxes or assessments which may be imposed upon the mortgaged premises or any part thereof;

Third.—That in case of default in the payment of any of the coupons or interest warrants, on any of the said bonds, as such they respectively become payable, and the continuance of such default for ninety days, or of default in the payment of the principal when the same becomes due or of any breach of any of the conditions or covenants in the said mortgage contained, the said mortgage shall become due and payable at the option of the holders of one million ($1,000,000) dollars of said bonds, and the said trustees as aforesaid or their successors shall upon demand of the holders of said bonds to the amount of one million ($1,000,000) dollars of said bonds, and the said trustees as aforesaid or their successors shall, upon demand of the holders of said bonds to the amount of one million ($1,000,000) dollars, enter into and upon said railroad, and operate and use the same, for the benefit of the holders of said bonds, as may be authorized by law, and shall thereafter upon like demand, take proceedings for the foreclosure and sale of the railroad and premises, for the benefit of the holders of said bonds; provided that if this company or its successors or assigns, shall after any such forfeiture has been made or suffered, and the principal of said bonds has been made due in consequence, and before a sale of said premises has been actually had under said mortgage, pay or tender the amount of interest in arrears, with interest thereon, and all costs and expenses incurred in proceeding to foreclose said mortgage, such forfeiture shall be waived, and this company shall be entitled to repossess itself of said property, and such mortgage shall stand as if no default had occurred;

Fourth.—That all the said bonds now authorized 145
to be issued, or which may be sold and negotiated, are upon an equality so far as regards the security, upon the entire property described in such mortgage, and shall be upon like equality in the payment thereof, except the bonds issued in payment or substitution for the bonds of the State of Tennessee, to the amount of one million one hundred and ninety-nine thousand ($1,199,000) dollars, which besides and in addition are by law entitled to, and are to be recognized as holding the first lien in pre- 146
ference to the residue of said bonds, and to all other obligations, mortgages or debts whatever, upon the railroad and property of this corporation, within the limits of the State of Tennessee.

That in case of default in the payment of interest, or of the principal of any of the said bonds to be numbered from number one to number one thousand one hundred and ninety-nine inclusive, and which will bear the certificate of the Comptroller of the State of Tennessee, and will be substituted and 147
issued in exchange for bonds of said State, the said Trustees, upon the request of the holders of five hundred of said bonds, may appoint a Receiver, with the usual powers, rights and duties of Receivers, who shall enter upon and take possession of so much of the railroad and property of this Company as lies within the limits of said State of Tennessee, for and in behalf of said trustees and the holders of said bonds, for the protection and enforcement of the lien of said bonds, as succeeding to said State 148
under the statutes thereof; or the said trustees, upon the like request, may themselves, in case of any such default, enter upon and take possession of all that portion of said railroad and property within the State of Tennessee, as aforesaid, and manage and operate the same, so long as such default shall continue, for the benefit and protection

of the holders of said substituted bonds, in the same manner as a Receiver appointed by a proper Court having jurisdiction; and this Company, upon request of said trustees, in case of such default, will surrender to said trustees, or to the Receiver so appointed by them, the possession of said railroad within the State of Tennessee, and will suffer the use and occupation thereof, so long as such default continues, by or for the benefit of said trustees, or the holders of said substituted bonds;

Fifth.—That all the said bonds, after reservation of those hereinbefore specified, and the proceeds thereof shall be faithfully used and applied to the construction, completion and equipment of the railroad and property, structures and buildings of the said Company, the payment of debts or liabilities already incurred for the same, and of liens and charges prior to the said proposed mortgage;

Sixth.—That whenever and as often as the Company shall acquire any additional land, or other property, the same shall be held and possessed under and subject to the mortgage made to secure the said bonds;

Seventh.—That the Company will, from time to time, if thereunto requested by the trustees named in said mortgage, or their successors, execute and deliver any further deed or assurance for the better assuring and conveying its railroad, and property, and franchises, whether now owned, or hereafter acquired, for the securing of the payment of the principal and interest of said bonds;

Eighth.—That the said trustees or their successors, shall be empowered to make such releases or exchanges of any property, in said mortgage or deed of trust described, and which may not be need-

ed or used for the track, buildings or other purposes 153
of said road, as may be expedient, upon condition that the net proceeds of all property so released, shall be used only in the purchase of other property or equipment for the road, or in the payment of said bonds or obligations, and that all property taken in exchange shall become subject to said mortgage in like manner with the property exchanged;

And whereas to make the assurance and security 154
of this mortgage and deed of trust complete, and to remove any question that it will create a perfect lien upon the whole of said line of railroad, from New Orleans to the Ohio River, as aforesaid, and upon all the property, estate, franchises and interests which were at any time heretofore owned, or exercised or operated by the said New Orleans, Jackson and Great Northern Railroad Company or said Mississippi Central Railroad Company, the Corporation known as the New Orleans, Jackson and 155
Northern Railroad Company, and the Central Mississippi Railroad Company, parties of the second and third parts hereto, have agreed and the respective Boards of Directors thereof have authorized and directed, that the said Corporations should unite in the execution of this mortgage or deed of trust, to secure the bonds to be issued as hereinbefore mentioned.

Now this indenture witnesseth that the said parties of the first, second and third parts, in con- 156
sideration of the premises, and for securing payment of the bonds to be made and executed to the amount of thirteen millions of dollars, in lawful money of the United States, as hereinbefore mentioned, and the interest to accrue thereon, and in consideration of the sum of ten dollars lawful money of the United States, unto then well and truly paid

by the parties of the fourth part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, released, confirmed, assigned, transferred, and set over, and by these presents do grant, bargain, sell, release, confirm, assign, transfer and set over unto the said parties of the fourth part, and their lawful successors in the trust hereby created, all and singular the Railroad aforesaid, with its appurtenances, depots, depot grounds, branches, furniture and equipments, and all and every right, title or interest which said parties of the first, second, or third parts, or either of them, had or has, or shall hereafter acquire in, or to the same, being the line of Railroad formerly known, in part as the New Orleans, Jackson and Great Northern Railroad, and in part as the Mississippi Central Railroad, and subsequently, by the consolidation of said two Companies, as the New Orleans, St. Louis and Chicago Railroad, and now intended to be owned and operated as one continuous line of railroad, from New Orleans to a point at or near Fillmore, upon the Ohio River opposite Cairo, by the said party of the first part, with all its branches, extensions and appurtenances, and with all the real estate now owned by the said party of the first part, or by the said parties of the second and third parts, or either of them, or which may hereafter, for the purposes of said railroad, be owned or acquired by said party of the first part, and all rights of way, rails, tracks, workshops, machinery, depots, depot grounds, improvements, tenements, and hereditaments, now owned by said parties of the first, second and third parts, or either of them, or hereafter to be acquired by said party of the first part, its successors or assigns, for the construction, operation and management of the said railroad; together with all rolling stock, locomotives, tenders, cars and equipments, machinery, tools, implements and materials,

and all and singular the other personal property of 161
every kind, nature and description, belonging to said party of the first part, or to the said parties of the second and third parts, now or hereafter in use, or intended for use upon the said railroad, or in connection with the proper equipment and operation of the same, and also all and singular the corporate rights, power and privileges, and franchises of the said party of the first part, now owned and possessed, or which may hereafter be required for the construction, maintainance and operation of said 162
railroad, or connected with or relating to the same, and all the like corporate powers, rights, privileges and franchises of the said parties of the second and third parts, either of them, so owned and possessed, or which may be acquired by them or either of them, with all rights, privileges and appurtenances whatsoever, affecting any of the hereby granted and mentioned premises and estates, or thereunto belonging, and all the estate, right, title, interest, claim and demand whatsoever of the said party of 163
the first part, or of the said parties of the second and third parts, either at law or in equity, of, in to and the same and every part and parcel thereof.

To have and to hold the same, with the appurtenances, unto the said parties of the fourth part, their successors and assigns, in trust for the use, benefit and security of the several persons and their successors, administrators, executors, or assigns, who shall hereafter become the owners and holders of any of the bonds to the amount of thirteen million ($13,- 164
000,000) dollars, intended to be hereby secured, subject, however, to the right of the party of the first part, its successors and assigns to retain the free and uncontrolled use, enjoyment, possession and management of the premises hereby granted, or intended so to be, until by reason of default by said party of the first part, in keeping and performing

165 the covenants and agreements in this Indenture contained, or any of them, the said parties of the fourth part are, as hereinafter provided, authorized to enter upon and take possession of, or sell the said premises as hereinafter set forth ;

And it is hereby expressly covenanted and agreed by and between the parties hereto, covenanting and agreeing for themselves and their successors and assigns, and for all parties who shall become inter-
166 ested as holders, or owners of the bonds intended to be secured hereby, in manner following, that is to say ;

First.—That the said party of the first part, its successors and assigns, will punctually pay the holders of the bonds aforesaid, intended to be secured hereby, or any that may be issued and accepted in lieu or renewal or substitution of the same respectively, interest thereon semi-annually, as the same shall become due and payable, according to the
167 terms of said bonds and the coupons attached thereto, on the days and at the place therein respectively mentioned ; and also on the day and at the place mentioned in said bonds, and whenever the principal sum of the same, or any of them, shall, according to the provisions thereof, become due and payable, will fully and entirely pay off and satisfy the whole of said bonds, principal and interest, without deduction from either said principal or interest for any tax, levy or assessment imposed upon the pre-
168 mises, franchises and property hereby conveyed, or upon the principal or interest of said bonds, either by the United States of America, or by the States of Louisiana, Mississippi, Tennessee and Kentucky, or either of them ;

Second.—That if the party of the first part, its successors or assigns, shall at any time hereafter, after

demand made, make default or refuse, neglect or 169
omit, for any period exceeding three (3) months, to
pay the semi-annual interest on the bonds intended
to be hereby secured, or any of them, or any inter-
est-warrant, or coupon, issued for the payment
thereof, or shall, after demand made, make default
or refuse or neglect or omit, for any period exceed-
ing three (3) months, after their maturity, to pay
the principal sums of each, and all of the said bonds
intended to be hereby secured, or of any of them,
then, and in the first case of default in the payment 170
of interest hereinabove stated, and upon demand of
the holders of said bonds to the amount of one mil-
lion ($1,000,000) dollars, the whole principal sum of
the said bonds, shall forthwith become due and
payable, anything in the said bonds, or in these
presents to the contrary notwithstanding, and in
such case, or in the case of default in the payment
of principal of any of the said bonds, for three
months after maturity of the same, the said trus-
tees or trustee, for the time being, upon the written 171
request of the holders of one million ($1,000,000) dol-
lars in amount of the said bonds then outstanding,
shall enter upon, and take possession of the rail-
road, estates, real and personal, and premises here-
by mortgaged, or agreed, or intended so to be, and
operate, use manage and control the said railroad
and premises to the best advantage, and appro-
priate the net income and proceeds derived there-
from, over and above running expenses, and inter-
est on prior incumbrances, after deducting the ex- 172
penses of this trust, and any sum which may be ne-
cessary to indemnify said trustees or trustee, for
any liability, loss, or expenditure, for or on account
of any matter, or thing done by him, or them in
good faith, in pursuance of his or their duty as
such trustees, to the payment in full without pre-
ference—first of the interest, secondly of the prin-

cipal of all the aforesaid bonds then outstanding, if said income and proceeds be sufficient, but if not, then *pro rata*, subject only to the prior rights, lien and preference to which the holders of the bonds to be issued, as hereinafter mentioned, in substitution for the bonds of the State of Tennessee, shall be entitled in the application of the net income and proceeds of so much of the said railroad as lies within the boundaries of said State of Tennessee; and the said trustees or trustee shall also, in case of such default, after, or without entering upon and taking such possession, upon the written request of holders of a like amount of said bonds then outstanding, proceed to sell the said railroad, estate real and personal, corporate rights and franchises, and all the premises hereby mortgaged, or agreed, or intended so to be, to the highest bidder, at public sale, in the city of New York, first giving at least three months' notice of such intended sale, by publication, to be made twice in each week, in at least two daily newspapers published in the city of New York, and in one daily newspaper published in the city of New Orleans, and in one newspaper published in each of the said States of Mississippi, Tennessee and Kentucky, and convey the same to such purchaser or purchasers, free from all and every the trusts hereby created, and without liability to see to the application of the purchase money. And the said parties of the fourth part, their survivor or survivors, successor or successors in the trust for the time being, shall execute and deliver to the purchaser or purchasers a deed of the premises, which shall convey to him or them a full, valid, and indefeasible title to the said railroad, franchises and rights, and all the estate, real and personal property, movable and immovable, herein described, and hereby mortgaged and conveyed, or intended so to be, which shall be a

perpetual bar to any claim or demand thereto, or 177
to any part thereof, by the said parties of the first, second or third part, or their successors, or any person claiming or to claim, under them. or either of them. And the said parties of the first, second and third parts, for themselves, their successors or assigns, covenant, promise and agree, to and with the said parties of the fourth part, their survivor or survivors, successor or successors, and assigns, and their grantees, under any such conveyance, that they will never claim any right, title, interest or 178
equity in or to any portion of the mortgaged premises, in bar opposition or impeachment of the title passed thereby. Or the said parties of the fourth part, their survivors, successors or assigns, may, in their discretion, in case of any default in any of the covenants or conditions herein, foreclose the equity of redemption of the said parties of the first, second and third parts, and of all other persons having any legal or equitable rights, or claims, in or to the mortgaged premises, or any part or parcel thereof, 179
by any proceedings in law or in equity provided for by the respective States, in which portions of the said railroad are built, and in the Courts of such States, or in the proper Courts of the United States of America, having jurisdiction thereof;

And the said parties of the fourth part, in case of the sale of said premises under and by virtue of the power hereby granted and created, shall and will appropriate the purchase money thereof, after such 180
deductions made for the expenses of the Trust and of such sale, and indemnity to the Trustees as aforesaid, to the payment as aforesaid—*first*—of the interest due on, and,—*secondly*,—of the principal of the said outstanding Bonds, in full if said purchase money be sufficient but, if not, then *pro rata* and without preference, excepting only the

proceeds of so much of the said Railroad, and property as is situated within the State of Tennessee, and to which the holders of the substituted bonds certified by the Comptroller of said State, are entitled in preference as herein agreed: *Provided*, however, that if the said party of the first part, its successors or assigns, shall in case of any such default in the payment of such interest, or of any interest upon prior mortgages, hereinafter covenanted to be paid or provided for, at any time before a sale has been actually made, either under the power of sale herein contained or under the decree of any Court or Courts, pay or tender to said parties of the fourth part, or their successors, or to the parties entitled thereto, the amount of interest so in arrear with interest thereon, from the time of default, and all costs, counsel fees, commissions and expenses incurred in the proceedings for such sale, or in taking possession of and operating said railroad by said parties of the fourth part, any such default and forfeiture shall be opened, and the said party of the first part, its successors or assigns, shall resume possession of said railroad and premises, and all parties hereto shall be restored to their first rights, the said default and consequent proceedings notwithstanding, and as if the same had not occurred; and in the event of there being in the hands of the said Trustees any portion of the Trust Estate, or of the proceeds thereof, after payment in full of the principal and interest of the aforesaid bonds, the said Trustees shall reconvey or pay over the same to the party of the first part, its successors or assigns.

Third.—That the bonds to be issued under and by virtue of this mortgage, or deed of trust, and to be secured by it, shall be bonds of one thousand dollars each, and of the tenor and effect following:

UNITED STATES OF AMERICA. 185

States of Louisiana, Mississippi, Tennessee and Kentucky.

No.....

Chicago, St. Louis and New Orleans Railroad Company, First Mortgage Seven per cent. Loan.

The Chicago, St. Louis and New Orleans Railroad Company, acknowledges itself indebted to the bearer in the sum of one thousand dollars, which it 186
promises to pay in lawful money of the United States, on the first day of November, in the year one thousand eight hundred and ninety-seven, at its office in the City of New York, and to pay interest thereon at the rate of seven per cent. per annum, payable semi-annually at said office, in like lawful money, upon presentation and surrender of the interest warrants or coupons hereto annexed, on the first days of May and November, in each year, as they respectively become payable, so long as the 187
principal remains unpaid, without deduction for State or United States taxes.

This is one of thirteen thousand bonds of similar amount, tenor and date, referred to in a mortgage made by the said Chicago, St. Louis and New Orleans Railroad Company, and the New Orleans, Jackson and Northern Railroad Company, and the Central Mississippi Railroad Company to Adolph Schreiber of the City of New Orleans, in the State 188
of Louisiana, James Fentress of Bolivar, in the State of Tennessee, and Lewis V. F. Randolph of the City of New York, in the State of New York, Trustees, dated the eighth day of November, 1877, to secure the payment of such bonds, and when the certificate hereon endorsed, is subscribed by said Trustees, it will be secured thereby.

189 In witness whereof the said Chicago, St. Louis and New Orleans Railroad Company, has caused its common seal and the signatures of its President and Secretary, to be hereto affixed the eighth day of November, 1877.

Seal of the Chicago, St. Louis and New Orleans Railroad Company.

W. H. OSBORN,
President.

190 STUYVESANT FISH,
Secretary.

ENDORSEMENT.

The within is one of thirteen thousand bonds of one thousand dollars each, secured by a mortgage made by the Chicago, St. Louis and New Orleans Railroad Company, and the New Orleans, Jackson and Northern Railroad Company, and the Central
191 Mississippi Railroad Company, to the undersigned as Trustees, dated the 8th November, 1877, and has been duly issued in pursuance of the trust created and conditions contained in said mortgage.
November 8th, 1877.

ADOLPH SCHREIBER,
JAMES FENTRESS,
LEWIS V. F. RANDOLPH. } Trustees.

Fourth.—That the said bonds to be issued under this mortgage, numbered from number one to num-
192 ber one thousand one hundred and ninety-nine, inclusive, shall be set apart, issued to, or used by said party of the first part, or persons acting with its consent and authority, to provide and be substituted for the bonds of the State of Tennessee, heretofore issued to the Mississippi Central and Tennessee Railroad Company and to the Mississippi Central Railroad Company, and shall be registered and

certified, pursuant to the statutes of the State of 193
Tennessee, by the Comptroller thereof, and such bonds of the aforesaid numbers so certified shall be entitled to and in fact become, as provided by the acts of the State of Tennessee aforesaid, a lien in the nature of a first mortgage, prior to the lien of the residue of the bonds secured hereby, and to all other mortgages and liens whatever upon the property of the said parties of the first and third parts, in the State of Tennessee; and in case of any default in the payment of interest upon the bonds 194
hereby secured, or any of them, or of default in the payment of the principal sum at their maturity, and of possession being taken or a foreclosure and sale had by the trustees as herein provided, the holders of said bonds, numbered from number one to number one thousand one hundred and ninety-nine, issued under this mortgage, besides and in addition to their rights in common with other bondholders in the residue of said property and its proceeds, shall be entitled to priority in the appropriation of such in- 195
come and proceeds so far as the same shall be derived from the portion of the said railroad hereby mortgage within the limits of said State of Tennessee, as well as to an equal and *pro rata* share in the income and proceeds of the residue of said mortgaged property with the residue of the bonds secured hereby.

Fifth.—That the said bonds to be issued under this mortgage, numbered from number one thousand 196
two hundred to number four thousand one hundred and forty inclusive, shall be reserved and deposited with said parties of the fourth part, and shall be used for the purpose of purchasing, or of being exchanged at par for the outstanding mortgage bonds heretofore issued by the New Orleans, Jackson and Great Northern Railroad Company, which are a

197 prior lien upon the railroad and property heretofore owned and operated by the same. And the said two thousand nine hundred and forty-one bonds shall be used and employed for no other purpose whatever, until the maturity of such outstanding bonds of said New Orleans, Jackson and Great Northern Railroad Company, which may not be so exchanged, whereupon the said party of the first part may sell the same under the direction of the parties of the fourth part, and apply the proceeds to the
198 payment of such outstanding bonds then unpaid, and if there shall remain none unpaid, or when all of them shall be paid, any unsold bonds then remaining shall be delivered to the said party of the first part;

Sixth.—That said bonds to be issued under this mortgage, numbered from number four thousand one hundred and forty-one to five thousand six hundred and forty inclusive, shall be reserved and
199 deposited with said parties of the fourth part, and shall be used for the purpose of being exchanged at par, or sold to pay or redeem or purchase the outstanding second mortgage bonds of the New Orleans, Jackson and Great Northern Railroad Company, hereinbefore mentioned. And said one thousand five hundred bonds shall be used and employed for no other purpose whatever until the maturity of said outstanding second mortgage bonds which may not be so exchanged, whereupon said party of the
200 first part may sell the same, under the direction of the parties of the fourth part, and apply the proceeds to the payment of such outstanding bonds then unpaid, and if there shall remain none unpaid, and when all of them shall be paid, any of said one thousand five hundred bonds, then remaining, shall be delivered to said party of the first part;

Seventh.—That the said bonds to be issued under this mortgage, numbered from number five thousand six hundred and forty-one, to number six thousand one hundred and forty inclusive, shall be reserved and deposited with said parties of the fourth part, and shall be used for the purpose of being exchanged at par for, or of paying and liquidating the outstanding and unpaid coupons under said first and second mortgages of said New Orleans, Jackson and Great Northern Railroad Company, provided for by the matured coupon bonds and mortgage of the New Orleans, Jackson and Northern Railroad Company, until said coupons or said matured coupon bonds, shall be fully paid and satisfied or cancelled; and if there shall then remain any of said five hundred bonds, after all such coupons shall be paid or cancelled, the same shall be returned and delivered to the party of the first part; 201 202

Eighth.—That the said bonds to be issued under this mortgage, numbered from number six thousand one hundred and forty-one, to number seven thousand one hundred and thirty-two, inclusive, shall be reserved, and shall be deposited with said parties of the fourth part, and shall be used for the purpose of being exchanged at par for, or of furnishing the means to pay and cancel or purchase the outstanding bonds under the first mortgage of the Mississippi Central Railroad Company, hereinbefore mentioned; and said nine hundred and ninety-two bonds shall be used and employed for no other purpose whatever, until the maturity of said outstanding first mortgage bonds of the Mississippi Central Railroad Company which shall not be so exchanged, which are legal and valid obligations against said Company, and entitled to a lein upon the premises mortgaged hereby or some portion thereof formerly owned by said Company; where- 202 204

upon the said party of the first part may sell the same under the direction of the parties of the fourth part and apply the proceeds to the payment of any such outstanding bonds then unpaid, which are legal and valid obligations as aforesaid; and if there shall remain none unpaid, and when all of them shall be paid, any of said nine hundred and ninety-two bonds then remaining shall be delivered to the said party of the first part;

Ninth.—That said bonds be issued under this mortgage, to be numbered from number seven thousand one hundred and thirty-three to number nine thousand one hundred and twenty-nine, inclusive, shall be reserved, and shall be deposited with said parties of the fourth part, and said bonds shall be used for the purpose of being exchanged at par, or providing for the payment and satisfaction or purchase as herein directed, of the outstanding bonds under the second mortgage of the said Mississippi Central Railroad Company, which are valid and legal obligations, and a lien upon the property and premises hereby mortgaged, or some portion thereof heretofore owned by said Company. And the said one thousand nine hundred and ninety-seven bonds, or so many thereof as shall be necessary, shall be used for the purpose of being exchanged, or providing for the payment and satisfaction of the outstanding bonds, under the second mortgage of the Mississippi Central Railroad Company, which are legal and valid as aforesaid, and for no other purpose whatever, until the maturity of any of said outstanding bonds, which may be so exchanged; whereupon said party of the first part, may sell the same, under the direction of the parties of the fourth part, and apply the proceeds to the payment of such outstanding bonds then unpaid; and whenever shall remain none of said bonds unpaid, and

when all of them shall be paid and exchanged, any of said one thousand nine hundred and ninety-seven bonds then remaining, shall be delivered to the said party of the first part ; 209

Tenth—That the said bonds to be issued under this mortgage, to be numbered from number nine thousand one hundred and thirty, to ten thousand three hundred and fifty, inclusive, shall be reserved and set apart, and shall be used for no other purpose, than for paying and satisfying, or for the purpose of purchasing or being exchanged for the outstanding coupons and scrip issued for interest upon the first and second mortgages of which may be valid and prior to this mortgage, upon the property and franchises of said Company, until all said outstanding coupons, scrip and other liens, upon said property of the said Mississippi Central Railroad Company, shall be fully paid, satisfied, and canceled, when any of said one thousand two hundred and twenty-one bonds remaining unsold, or unissued, shall be delivered to the said party of the first part. 210 211

Eleventh.—That the said bonds to be issued under this mortgage, and numbered from number ten thousand three hundred and fifty-one to number ten thousand eight hundred and fifty inclusive, shall be used and issued from time to time to supply the means to pay each or any of the prior liens or incumbrances upon said premises hereby mortgaged, or any portion theref and the general expenses of the trust hereby created, and of the cancelling and satisfaction of the debts and liens referred to ; 212

Twelfth.—That the residue of the bonds to be issued under this mortgage, numbered from number ten thousand eight hundred and fifty-one to number thirteen thousand inclusive, shall be

used—First, to provide funds for the payment of coupons overdue and not postponed, upon the first and second mortgage bonds of the New Orleans, Jackson and Great Northern Railroad, and upon the first mortgage bonds of the Mississippi Central Railroad Companies, and not otherwise herein specifically and sufficiently provided for, and other debts and liens prior to this mortgage; Second, for the construction, completion and improvement of the line of railroad of the party of the first part, and its equipment, and for the payment of debts, or liabilities incurred for the same, and to put the said railroad in order as a first-class railroad, with sufficient equipment to operate the same. And upon evidence being furnished to the parties of the fourth part, or their successors, that any expenditure has been made, or liability incurred for such construction or improvement, since the tenth day of March, 1876, they shall deliver to the said party of the first part, or to the purchasers of the said bonds, so many of said bonds, or the proceeds therof, as shall be equivalent to the amount of such overdue coupons so paid, or of such expenditures so made or incurred, until all such debts, liens and coupons shall be fully paid, and until the said line from New Orleans to the Ohio River, as aforesaid, shall be fully completed and equipped as a first-class railroad, or until the whole number of the said thirteen thousand bonds, after applying such portions as have been heretofore by these presents specifically appropriated, shall have been delivered to the said party of the first part, or to the purchasers thereof;

And the said party of the first part, for itself, its successors and assigns, doth covenant and agree with the said parties of the fourth part and their successors, and to and with the holders of the bonds

to be issued and secured under this mortgage, that 217
they will at all times, until the existing mortgages hereinbefore mentioned, upon the property hereby mortgaged, or certain portions thereof, shall have been extinguished by the substitution of the bonds hereby secured, for the bonds issued under said prior mortgages, or by the payment thereof, keep, pay, and discharge any and all interest which shall become due and payable, upon the bonds secured by said prior mortgages. And that all the said bonds to be issued 218
under and secured by this Indenture, after reservation of those hereinbefore specified, and the proceeds thereof, shall be faithfully used and applied to the construction, completion and equipment of the railroad property, structures and buildings of the said party of the first part, and to the payment of liens and charges thereon, as aforesaid;

And the parties aforesaid, for themselves, their successors and assigns, do respectively further 219
covenant, promise and agree that, in case default shall at any time be made in the payment of any interest upon any of the said bonds numbered from number one to number one thousand one hundred and ninety-nine inclusive, which will bear the certificate of the Comptroller of the State of Tennessee, and will be bonds substituted or issued in exchange for the bonds of said State, or in the payment of the principal of said bonds at their maturity, and provided the holders of 220
five hundred of said bonds, shall in writing request or demand the same, the said parties of the fourth part, or their successors, may and will appoint a suitable person to take possession of so much of said road and its appurtenances, as lie within the limits of the State of Tennessee, and are subject to the prior and special lien of the bonds aforesaid with the

used—First, to provide funds for the payment of coupons overdue and not postponed, upon the first and second mortgage bonds of the New Orleans, Jackson and Great Northern Railroad, and upon the first mortgage bonds of the Mississippi Central Railroad Companies, and not otherwise herein specifically and sufficiently provided for, and other debts and liens prior to this mortgage; Second, for the construction, completion and improvement of the line of railroad of the party of the first part, and its equipment, and for the payment of debts, or liabilities incurred for the same, and to put the said railroad in order as a first-class railroad, with sufficient equipment to operate the same. And upon evidence being furnished to the parties of the fourth part, or their successors, that any expenditure has been made, or liability incurred for such construction or improvement, since the tenth day of March, 1876, they shall deliver to the said party of the first part, or to the purchasers of the said bonds, so many of said bonds, or the proceeds therof, as shall be equivalent to the amount of such overdue coupons so paid, or of such expenditures so made or incurred, until all such debts, liens and coupons shall be fully paid, and until the said line from New Orleans to the Ohio River, as aforesaid, shall be fully completed and equipped as a first-class railroad, or until the whole number of the said thirteen thousand bonds, after applying such portions as have been heretofore by these presents specifically appropriated, shall have been delivered to the said party of the first part, or to the purchasers thereof;

And the said party of the first part, for itself, its successors and assigns, doth covenant and agree with the said parties of the fourth part and their successors, and to and with the holders of the bonds

to be issued and secured under this mortgage, that 217
they will at all times, until the existing mortgages hereinbefore mentioned, upon the property hereby mortgaged, or certain portions thereof, shall have been extinguished by the substitution of the bonds hereby secured, for the bonds issued under said prior mortgages, or by the payment thereof, keep, pay, and discharge any and all interest which shall become due and payable, upon the bonds secured by said prior mortgages. And that all the said bonds to be issued 218
under and secured by this Indenture, after reservation of those hereinbefore specified, and the proceeds thereof, shall be faithfully used and applied to the construction, completion and equipment of the railroad property, structures and buildings of the said party of the first part, and to the payment of liens and charges thereon, as aforesaid;

And the parties aforesaid, for themselves, their successors and assigns, do respectively further 219
covenant, promise and agree that, in case default shall at any time be made in the payment of any interest upon any of the said bonds numbered from number one to number one thousand one hundred and ninety-nine inclusive, which will bear the certificate of the Comptroller of the State of Tennessee, and will be bonds substituted or issued in exchange for the bonds of said State, or in the payment of the principal of said bonds at their maturity, and provided the holders of 220
five hundred of said bonds, shall in writing request or demand the same, the said parties of the fourth part, or their successors, may and will appoint a suitable person to take possession of so much of said road and its appurtenances, as lie within the limits of the State of Tennessee, and are subject to the prior and special lien of the bonds aforesaid with the

221 usual powers and duties of a Receiver, and in like manner as the Governor of said State under the statutes thereof, would appoint such Receiver, if the State had continued to hold its lien without transfer of the same;

Or in the event of any such default, and upon the like request of the holders of five hundred of said bonds, the said Trustees may and will themselves enter upon, and take possession of said road, and its appurtenances, within the State of Tennessee
222 aforesaid, and operate and manage the same, and apply the net earnings thereof to the payment and satisfaction of the interest, or the principal of said bonds, so in arrears, in like manner, and with the same rights, powers and duties as would be possessed and exercised by a Receiver, who should be appointed by a Court of competent jurisdiction in such a case. And the said party of the first part, its successors and assigns, in case of such default, upon the request, or demand of said parties of the
223 fourth part or their successors, will forthwith surrender to said parties of the fourth part, or their successors, or to the agent or Receiver, appointed by them, the possession and control of said railroad, within the State of Tennessee, in the same manner as they would surrender the same to a Receiver appointed by a competent Court, or to a Receiver who should be appointed by the Governor of the State of Tennessee, under the statutes aforesaid, if such default had occurred before any transfer of its
224 lien or rights by said State.

And it is further covenanted and agreed by and between the parties hereto, their successors and assign, that whenever and as often as the said party of the first part, or its successors, shall acquire any franchises, lands equipment, or other property or interest of any name or nature, for the use of,

or in connection with its railroad, or for the pur- 225
poses of its incorporation, the said company, its successors or assigns, shall, and will acquire, possess and hold the same, and every part and parcel thereof, upon and subject to the lien and trusts of this Indenture; and that the said party of the first part, its successors and assigns, will from time to time, and at all times hereafter, and as often as thereunto requested by the parties of the fourth part, their successor or successors, execute and deliver any and all further deeds, conveyances and 226
assurances in the law for the better assuring unto the said parties of the fourth part, or their successors upon the trusts herein mentioned, all their railroads, its equipment and property of every nature, now owned or which may be hereafter acquired, including the franchise to be a corporation; and that in case the said party of the first part, its successors or assigns, shall thereafter receive or acquire lands or other property, and the said parties of the fourth part, their successor or successors, in behalf 227
of the holders of the bonds issued under this Indenture, shall deem it for the interest of their trust, and shall request the same, the said party of the first part, and its successors, will, from time to time, execute, and deliver, any and every such other mortgage or deed of trust or further assurance covering the lands or property so received, or acquired, which shall be necessary to hold and bind the same, as security for the payment of the principal and interest of the bonds aforesaid, and performance of the 228
covenants and stipulations of this Indenture.

And it is further covenanted and agreed, that it shall and may be lawful for the said party of the first part, its successors, or assigns, at any time or times hereafter, to exchange for other property or sell any part of the hereby mort-

229 gaged premises, other than the said Railroad, which may not be necessary for the uses and purposes of such Railroad, and to convey the same, without liability on the part of the grantee as to the disposition of the purchase money or of the property received in exchange by the party of the first part, and the said parties of the fourth part, or their successors, shall and will, on the request of the party of the first part, its successors or assigns, execute all necessary releases for that purpose, the party of
230 the first part covenanting, that the proceeds of any sale so made shall be invested by it, either in the improvement of the remaining part of the mortgaged premises, or in the purchase of other property, real or personal, for the uses of its Railroad, which property so purchased, as also any acquired in exchange, as aforesaid, shall be subject to all the trusts hereby created of the property described in this Indenture, or in the purchase of bonds issued hereunder, which bonds, so purchased, shall be
231 forthwith cancelled and delivered to the parties of the fourth part, and the said parties of the fourth part and their successors may also, in their discretion, on the request of the party of the first part, consent to any change in the location of the track of said Railroad, or the depots and buildings, or structures thereof, as may seem expedient, and are authorized to make and deliver all instruments necessary and proper to effect such objects. And the party of the first part further covenants and
232 agrees that whenever it, or its successors or assigns, shall acquire any lands, property or franchises, or equipments of any nature or description, for use in connection with said Railroad, by any such change in the location of the tracks, depots or buildings thereof, or otherwise, they will hold the same upon and subject to the trusts of this Instrument, until conveyances thereof shall have been made and de-

livered, if required; and the party of the first part, 232
and its assigns or successors, shall and will, whenever so requested, execute and deliver such further conveyances and assurances, for the better assuring to the parties of the fourth part, and their successors, upon the trusts herein expressed, any property, real or personal, movable or immovable, to which the said party of the first part, or its successors or assigns, may become entitled, by any purchase or exchange, or alteration in the location of the tracks, depots or buildings of said Railroad, as 234
aforesaid.

And it is further covenanted and agreed, by and between the parties hereto, that in case of the death, resignation or inability of either of said parties of the fourth part, hereinbefore named as the Trustees under this indenture, the franchises, rights and property of every description herein conveyed to them shall at once vest in the survivor or survivors, and that such survivor or survivors may, with the 235
assent of the party of the first part, designate a person or persons to succeed such person or persons dying, or resigning, or unable to act as one of the parties of the first part. And upon the person or persons so designated delivering to such survivors and to the said party of the first part, or its successors, a written acceptance of the trust, he or they, as the case may be, shall become the successor or successors of the person or persons so dying, resigning or becoming unable to act with all the rights 236
and powers herein and hereby vested in the said parties of the fourth part. And in case all parties of the fourth part shall die, resign, or become unable to act, as aforesaid, so that there shall be no Trustees to discharge the trusts and duties created by this Instrument, or if any survivor or survivors and the party of the first part shall not agree in the

choice of a person or persons to succeed to and fill any such vacancy, persons to succeed thereto or to fill said trusteeships, or any of them, may be appointed by the Chief Justice of the Supreme Court of the State of Louisiana, on the application of the party of the first part, or of any such surviving Trustee or Trustees, or of holders of at least one hundred bonds to be issued hereunder, as aforesaid, provided that notice of the application be previously published in at least three daily papers in the City of New York, and in one newspaper published in each of the States of Louisiana, Mississippi, Tennessee and Kentucky for four successive weeks, one in each week.

And the said party of the first part, its successors and assigns, further covenants and agrees to pay to the said parties of the fourth part, and each of them, annually, for their ordinary services under this trust and in the discharge of the duties hereby created the sum of three hundred ($300) dollars, together with any necessary expenses actually incurred for clerk hire and legal advice, and it is further covenanted and agreed, and this trust is accepted upon the express condition that the said Trustees, parties of the fourth part, shall not nor shall their successors, or any future Trustee or Trustees, incur any liability or responsibility whatever, in consequence of permitting or suffering the said party of the first part to retain or be in possession of the railroad property and premises hereby mortgaged or any part thereof, or for any destruction, deterioration, loss or damage which may be done to or incurred by the railroads or estates hereby mortgaged, either by the act or default of such party of the first part, or its agents or servants, or of any other person or persons whomsoever, or for the consequences of any breach on the part of the party of the first part, or

the parties of the second or third parts, of any covenants herein contained, or of any act of the party of the first part, its agents or servants, or of the parties of the second or third parts, nor for any other matter or thing except for their or his own wilful or negligent breach of the trusts herein expressed and contained ; 241

And it is expressly covenanted and agreed, by and between the parties aforesaid, that all and singular the covenants, conditions and agreements herein contained, shall extend and apply to the successors and assigns ef the respective parties, whether they be expressly named therein or not ; 242

And it is hereby expressly provided, and this Indenture is made upon condition that, if the said Chicago, St. Louis and New Orleans Railroad Company, its successors or assigns, shall well and truly pay, or cause to be paid, all the interest, without deduction of any taxes or assessments, as the same shall from time to time become due and payable upon the said bonds, as hereinbefore stipulated, and shall pay the said principal of said bonds at maturity, according to the tenor and intent thereof, and shall keep and perform all and every the covenants herein contained on the part of the said Company, then and in that case this Indenture shall be and become null and void, and the estate hereby granted or conveyed, or agreed so to be, shall be void and of no offect, anything herein contained to the contrary notwithstanding ; otherwise this Indenture and the estate hereby granted and conveyed, shall be and remain in full force. 243 244

In Witness Whereof, the said Chicago, St. Louis and New Orleans Railroad Company, hath caused its common seal and the signatures of

its President and Secretary to be hereto affixed; and the said New Orleans, Jackson and Northern Railroad Company hath also caused its common seal and the signatures of its President and Secretary to be hereto affixed; and the said Central Mississippi Railroad Company, hath also caused its common seal and the signatures of its President and Secretary to be hereto affixed; and the said Adolph Schreiber of the City of New Orleans in the State of Louisiana, James Fentress of Bolivar in the State of Tennessee, and Lewis V. F. Randolph of the City of New York in the State of New York, Trustees, have hereunto set their hands and seals, all of which is done the eighth day of November, the year of our Lord one thousand eight hundred and seventy-seven.

Seal of the Chicago, St. Louis and New Orleans Railroad Company.

The Chicago, St. Louis & New Orleans Railroad Company, by
W. H. OSBORN, President.
STUYVESANT FISH, Secretary.

Seal of the New Orleans, Jackson and Northern Railroad Company.

The New Orleans, Jackson & Northern Railroad Company, by
W. H. OSBORN, President,
STUYVESANT FISH, Secretary.

The Central Mississippi Railroad Company, by 249

Seal of the Central Mississippi Railroad Company.

W. H. OSBORN, President.
STUYVESANT FISH, Secretary.

Signed, sealed and delivered by the said Messrs. Osborn and Fish in their said respective capacities in our presence.

L. E. SIMONDS,
W. W. FINLEY. 250

[L. S.] A. SCHREIBER,
[L. S.] JAMES FENTRESS, } *Trustees.*
[L. S.] L. V. F. RANDOLPH,

L. E. SIMONDS, } Witnesses to the signatures of
ANDREW HERO, JR. } A. Schreiber and Jas. Fentress.

W. J. MAURIAC, } Witnesses to the signature of
W. E. RUTTAN, } Lewis V. F. Randolph. 251

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253 RESPONDENT'S EXHIBIT NO. 2.
W. H. D. L., Spl. Exr.

"STATE OF TENNESSEE.

We, James D. Porter, Governor, and Charles N. Gibbs, Secretary of State of the State of Tennessee, do hereby certify—pursuant to section 6 of an Act entitled 'An Act to liquidate the State debt contracted in aid of Railroad Companies in the State of Tennessee,' passed Eebruary 25, 1869, that Adolphe
254 Schreiber, James Fentress and Lewis V. F. Randolph (Trustees under a certain mortgage made the eighth day of November, 1877, between the Chicago, St. Louis and New Orleans Railroad Company, of the first part; the New Orleans, Jackson and Northern Railroad Company, of the second part; the Central Mississippi Railroad Company, of the third part, and the said Trustees of the fourth part), as Trustees for the purchasers and holders of the bonds to be issued under said mortgage, number-
255 ed from number one to number one thousand one hundred and ninety-nine, inclusive, have paid in and delivered up bonds and coupons of the State of Tennessee as authorized by the Act aforesaid equal in amount to the indebtedness heretofore created by the Mississippi Central and Tennessee Railroad Company, and the Mississippi Central Railroad Company, and which is a first lien on the Railroad and property heretofore known as the Mississippi Central Railroad, lying in the State of Tennessee,
256 and has become a debt of, and a first lien upon the property of the Chicago, St. Louis and New Orleans Railroad Company, its successor, in the State of Tennessee; that such payment was made by and with the written consent of the Board of Directors of the Central Mississippi Railroad Company and of the Chicago, St. Louis and New Orleans Railroad Company, as allowed by the statutes of Ten-

nessee, and that the said Trustees, for and in behalf 257
of the holders of said bonds to be issued under said mortgage to provide and be substituted for the debt of the State of Tennessee so paid, are substituted and entitled to all the liens against said property for the payment of said debt that the State of Tennessee had or has by law.

And we do hereby, as provided and authorized in the Act of February 25, 1869, and acts amendatory 258
thereof, in the name of the State of Tennessee and in her behalf and for the considerations above-named, assign and transfer to the said Adolphe Schreiber, James Fentress and Lewis V. F. Randolph, Trustees as aforesaid, all the debt and lien of the State of Tennessee on the Railroad and property heretofore owned in said State, by the Mississippi Central and Tennessee Railroad Company and on all the railroad and property in said State heretofore known as the 259
Mississippi Central Railroad, now known as the Chicago, St. Louis and New Orleans Railroad, which said State has or had on the same by reason of the internal improvement laws of said State, and the fact that said State had granted aid to said railroads under the statutes thereof, with all the rights, privileges and powers which said State has or had for enforcing said lien; the object being to substitute the said Trustees for the State, and to place them in the same position and with the same rights
which the State of Tennessee had previous to and 260
before the said payment and delivery of State Bonds, with full power to enforce the same in any and every manner in which the said State may or might.

This the 28th of November, A. D. 1877.

In witness whereof, I, JAMES D. PORTER,
Governor of the State of Tennessee,

261 have hereto set my hand and caused the great seal of the State of Tennessee to be hereunto affixed, this 28th of November, 1877.

(Sd.) JAS. D. PORTER,
Governor.

In witness whereof, I, CHAS. N. GIBBS, Secretary of State, have hereto set my hand and the great seal of the
262 State of Tennessee, this November 28, 1877.

(Sd.) CHAS. N. GIBBS,
[L. S.] *Sec. State.*

263

264

DEPOSITION OF ADRIAN ISELIN.

CIRCUIT COURT OF THE UNITED STATES, 1

WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of internal improvement Bonds of Tennessee, issued to the MEMPHIS & CHARLESTON RAILROAD COMPANY,

vs.

THE MEMPHIS & CHARLESTON RAILROAD COMPANY *et al.* 2

Testimony and proofs for final hearing taken on the part of the respondents in the above-entitled suit, under and pursuant to the 67th Rule in Equity, as amended, before William H. De Lancey, Special Examiner, duly appointed herein. 3

NEW YORK, February 14, 1880.

Present.—Mr. W. Y. C. HUMES,
For Respondents. 4

MR. E. L. ANDREWS.
For Complainants.

5 ADRIAN ISELIN, a witness produced on the part of the respondents in the above-entitled suit, being first duly cautioned and sworn therein, deposes and says:

(Deposition taken subject to all legal objections of both parties.)

Direct examination by MR. HUMES:

1 Q. Please state your name, firm name, residence
6 and occupation, and how long you have resided where you do now, and done business there?

A. Adrian Iselin, of full age. I am a partner in the house of A. Iselin & Co., in liquidation, and partner in the house of Iselin, Neeser & Co. My residence is in the city of the New York and has been nearly all my life. I was born in the city. My business has always been that of a banker and commission merchant.

2 Q. Did you or not, as a banker, negotiate and
7 buy the substitution bonds of the East Tennessee, Virginia and Georgia Railroad Company, and if yea at what time?

A. I did buy them. I bought $500,000 on 1 July, 1870; $500,000 between the 25th and 28th of July, 1870; $200,000 on the 25th March, 1871, and $840,000 in April, 1871, between the 3d and the 25th of April.

3 Q. Were you before the dates of these purchases or within the period embraced by them, a president, director, or stockholder in said company, or occu-
8 pying any fiduciary or confidential relation to this company?

A. I was not at the time of the purchases made in 1870; but I am not certain whether I held any stock or not in the company before the purchases made in 1871. I had no connection with the company at all before the first purchases.

4 Q. What did you give for these bonds, and did you or not consider it the fair value at the time?

A. I paid 82½ per cent for the bonds and accrued 9
interest. I considered it the full and fair value at the time. I paid this amount in money at the time, without any deduction whatever.

5 Q. Were you or not aware at the time you made these purchases that the holders of State bonds of Tennessee, held a large amount of interest coupons overdue and unpaid by the State—that they had funded some of them under the act of 1865, and had never set up any claim of an obligation in respect of them against the railroad companies to whom 10
they were issued, or a lien on the same.

A. I was aware that a large amount of interest coupons on Tennessee State bonds remained unpaid. That a portion of these coupons had been funded previously into new State bonds, and I was not aware that any holder of Tennessee State bonds had brought forward any claim that their bonds were secured by a lien on the railroads to which they had been issued.

6 Q. Did you have anything to do with the negotiation of or did you purchase any of the substitu- 11
tion bonds issued by the Mobile and Ohio Railroad Company; if yea, please state the facts?

A. I purchased the Tennessee substitution bonds of the Mobile and Ohio Railroad in conjunction with R. T. Wilson & Co. and Duncan, Sherman & Co. Some bankers in Europe were interested in the purchase made in the name of my house. These purchases were made in December, 1871, at 85 and accrued interest. We paid for them in money.

7 Q. At the time that these purchases were made 12
was your knowledge and information the same or different touching the holders of State bonds and overdue coupons, and the absence of any claims by them of obligation against or lien upon the railroads as it was when you purchased the substitution bonds of the East Tennessee, Virginia and Georgia Railroad.

13 A. It was the same.

8 Q. Before you purchased the East Tennessee, Virginia and Georgia Railroad Company substitution bonds did you know of their being offered for sale elsewhere?

A. I knew that the East Tennessee, Virginia and Georgia substitution bonds were offered to the New York Guaranty and Indemnity Co. before they were offered to me, and my first knowledge of these bonds was derived from a discussion in relation to them at
14 the board of trustees of the above company, of which I was a member.

9 Q. Did you or not by and with the consent of the Memphis and Charleston R. R. Co. purchase from the State of Tennessee, and take an assignment of the lien of the State on the property of said company for the debt due from said company to the State in respect of the State bonds lent by the State to said company; if yea, please give the date?

15 A. I did so purchase the lien which the State of Tennessee held on a portion of the Memphis and Charleston R. R. for the bonds issued by the State to this corporation. This was in the last days of July or beginning of August, 1877.

10 Q. Please state what facts, if any, existed within your knowledge or information, touching the interest coupons of the State bonds of Tennessee from 1865 to July, 1877?

A. I know that during this period the coupons of
16 the State remained unpaid, except after they had been funded in the new bonds, when I believe three coupons were paid.

11 Q. During this period, from 1865 to July, 1877, did the holders of any coupons of Tennessee bonds claim or demand payment of the same, by legal proceeding or otherwise, from any railroad company in the State of Tennessee?

On or about the twenty-fifth day of July, 1877, my firm of A. Iselin & Co., consisting of myself and my son, Adrian Iselin, Jr., delivered to the State of Tennessee, Tennessee State bonds and coupons to the amount of $1,736,920 in payment for the assignment to us of the lien of the State upon so much of the Memphis & Charleston Railroad as was situated in the State of Tennessee, which lien was transferred to us by the assignment executed by James D. Porter, Governor of Tennessee, bearing date the 25th day of July, 1877, a copy of which is annexed to my deposition in this case.

A. I never heard that any such claim was made. 17

12 Q. Do you not now know, and did you not also know in July, 1877, that all the overdue coupons on Tennessee bonds had been funded by the holders thereof, and their bonds registered under the funding act of Tennessee of March, 1873?

A. I do not know whether the coupons on every one of the Tennessee State bonds were so funded, but I do know that all, except a very small number, were so funded, as no bond which had not been registered was a good delivery on our stock exchange, 18 and I never saw a Tennessee State bond which had not been so registered; I knew this in July, 1877, as well as I do now.

13 Q. Were the facts stated by you in your last two answers known to you at the time you purchased the lien on the Memphis and Charleston R. R. from the State, that is, the absence of demand of claim by holders against the railroad companies, and the funding of coupons and registering of bonds under the act of 1873? 19

A. Yes, these facts were then known to me.

14 Q. Please state whether you had any conversation with or heard any conversation by any holder or holders of Tennessee bonds while the settlement of the Memphis and Charleston R. R. debt was pending; if yea, please state them?

A. I had some conversations on this subject with Mr. Peter Geddes at my own office, and was present at numerous conversations which took place at the office of R. T. Wilson & Co. on the subject of pay- 20 ing off the debt of the Memphis and Charleston R. R. Co. due the State of Tennessee. In these conversations Mr. Geddes urged Mr. Wilson, as President of the Memphis and Charleston R. R., to pay off this debt with as little delay as possible, as the Governor of the State of Tennessee had told him—Mr. Geddes—that it would very much facilitate the

21 settlement of the State debt if its amount had been reduced to the lowest possible point by the railroads who were able to do so paying off the debts they owed the State. Mr. Wilson repeatedly stated to Mr. Geddes that he was perfectly willing and even anxious to pay off the debt due by the Memphis and Charleston R. R. if he could procure the State bonds necessary to do it with, and as few of these State bonds were offered at the time in the market, Mr. Wilson asked Mr. Geddes whether
22 he would not loan him the Tennessee State bonds he controlled so as to be able to pay off the debt due by the Memphis and Charleston R. R. to the State. This, however, Mr. Geddes refused to do, saying, I believe, that he had no authority for disposing of bonds in that way. In the conversations which I had with Mr. Geddes at my office, Mr. Geddes urged me to make Mr. Wilson pay off the Memphis and Charleston R. R. debt to the State of Tennessee with as little delay as possible, urging
23 the same arguments as in the conversations held at Wilson's office.

Adjourned till further notice.

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52 BROADWAY, February 16, 1880.

Direct-examination resumed :

15 Q. When did the conversations that you have
24 related as occurring between Mr. Geddes, Mr. Wilson and also yourself, occur?

A. As far as I recollect they occurred in the spring of 1877, whilst the question of the Memphis and Charleston R. R. Company paying off the State lien was being discussed by Mr. Wilson and myself and some other parties interested in the Memphis and Charleston R. R.

16 Q. Will you please exhibit with this your deposition copies of the evidences of your purchase of the State lien on the Memphis and Charleston R. R. and the contracts with the company in settlement thereof. 25

A. I have not those documents with me, but will produce them and file them with this deposition.

17 Q. If you have refreshed your memory, please state accurately when you became officially connected with the East Tennessee, Virginia and Georgia R. R. Co.? 26

A. I became director of that company in September, 1874, and stockholder in December, 1873.

Cross-examined by E. L. ANDREWS, Esq., for complainant:

18 x Q. Have you ever heard of the opinion of Judges Davies and Davis to the effect that the Tennessee bonds issued to railroads, constituted liens thereon. 27

A. Yes, I did.

19 x Q. Was it not in the year 1870, and about the time of negotiations with Lombard, Odier & Co., of Geneva, for the sale of East Tennessee, Virginia and Georgia R. R. Co. substitution bonds that you heard of that opinion?

A. Yes, it was. The opinion was shown to me by Mr. Odier.

20 x Q. Were you not in some way connected, and if so, how, with the obtaining of the opinion of Charles Tracy, Esq., of the New York bar, in reference to the matter stated in the foregoing question? 28

A. I was no further connected with obtaining that opinion, except that I told Mr. Odier if the opinion of Davies and Davis gave him the least

29 anxiety, he had best have the opinion of some lawyer, selected by himself, on the subject; he said he had known Mr. Tracy in Europe; he would go to him; I personally did not come in contact with Mr. Tracy at that time.

21 x Q. How about any subsequent time?

A. I am not certain, but believe that I did come in contact with Mr. Tracy in relation to the opinion he gave later about the legality of preserving the lien which the State of Tennessee held on the Mo-
30 bile and Ohio R. R. Co., after it had been paid; after the debt to the State had been paid.

22 x Q. Did you not consult any other counsel in relation to any of these matters at or about any of those times?

A. I consulted personally no counsel at the time I bought the East Tennessee, Virginia and Georgia R. R. substitution bonds, but read over the opinions handed me by Mr. R. T. Wilson of lawyers in Tennessee; one of them was named Baxter. The time the
31 Mobile and Ohio R. R., the consultations with lawyers, concerning the legality of substituting railroad bonds for the State lien, and the way of doing it, were carried on principally by Mr. R. T. Wilson and William B. Duncan, and with the exception of Mr. Charles Tracy, I do not recollect having asked the advice personally of any counsel. One of the lawyers with whom Mr. Wilson consulted was Mr. Charles F. Southmayd.

23 x Q. Were you not a director of the Galla-
32 tin National Bank, and if so about what time?

A. I was a director of the Gallatin National Bank for about thirty years, from 1846 to 1876.

24 x Q. Did not the Gallatin National Bank offer Nashville & Decatur substitution bonds for sale?

A. Yes, sir; and also East Tennessee, Virginia & Georgia Railroad bonds.

25 x Q. Was not the opinion of Charles Tracy

printed and published in some of the prospectuses 33
of the sale of substitution bonds by the Gallatin Bank?

A. One of the opinions of Charles Tracy was printed in pamphlet form, but was not circulated either here or in Europe.

26 x Q. Why did you not publish, if you did not, or notify intending purchasers of the substitution bonds in America or Europe of the opinion of Davies and Davis, the former having been a Chief-Justice of the State of New York? 34

A. Because as long as the parties to whom this opinion was addressed and in whose interest it was apparently written did not act upon it, it was a proof that they themselves considered this opinion unsound, and did not consider they could maintain any claim against the railroads for the bonds they held from the State of Tennessee. The parties in whose interest this opinion had been written having attached no importance to it I did so neither.

27 x Q. The opinion shown to you of Davies & 35
Davis, was it not printed?

A. It was printed.

28 x Q. Had you not negotiated for Tennessee substitution bonds about seven years before your conversation with Mr. Geddes as testified by you?

A. Yes, I had.

29 x Q. Were you not one of the complainants in the suit of Adrian Iselin and others versus the Mobile & Ohio Railroad Company and others in the United States Circuit Court for the Western Dis- 36
trict of Tennessee, pending therein during the year 1877?

A. Yes, sir.

30 x Q. Were you not present upon the hearing of the appeal of that case, in the Supreme Court of the United States?

A. Yes, I was.

anxiety, he had best have the opinion of some lawyer, selected by himself, on the subject; he said he had known Mr. Tracy in Europe; he would go to him; I personally did not come in contact with Mr. Tracy at that time.

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A. Yes, I had.

29 x Q. Were you not one of the complainants in the suit of Adrian Iselin and others versus the Mobile & Ohio Railroad Company and others in the United States Circuit Court for the Western District of Tennessee, pending therein during the year 1877? 36

A. Yes, sir.

30 x Q. Were you not present upon the hearing of the appeal of that case, in the Supreme Court of the United States?

A. Yes, I was.

37 31 x Q. Were you not aware that the Supreme Court of the United States took the case under advisement, and so held it after its adjournment for the summer recess of 1878?

(Objected to as wholly irrelevant and incompetent.)

A. I know that some time passed before the Supreme Court gave any decision upon that case.

32 x Q. Had not an effort been made pending
38 this suit to have the substitution bonds of the Memphis & Charleston Railroad placed on the Stock Exchange?

A. I do not know.

33 x Q. At what prices did you sell the East Tennessee, Virginia & Georgia, the Mobile & Ohio and the Memphis & Charleston substitution bonds if the latter have been sold?

A. The latter were bought by us and other parties, and to my knowledge none of them have been
39 resold, at least we hold all the bonds we purchased. I refuse to answer what price Mobile & Ohio & East Tennessee, Virginia & Georgia bonds were sold by me, because it is a matter which only concerns me personally.

34 x Q. Have not the new first mortgage bonds and debentures of the Mobile & Ohio Railroad been placed on the New York Stock Exchange, and were you not at that time a holder of those securities?

A. Those bonds were placed on the New York
40 Stock Exchange, and I was a holder at that time.

35 x Q. Did you not state to Mr. Peter Geddes that one of the directors of the Memphis & Charleston Railroad, Mr. Cossitt, opposed the purchase of Tennessee bonds to deliver to the State, on the ground that the company would get them cheaper after a time, or words to that effect?

A. I do not recollect whether I stated this to Mr.

Geddes. I do recollect that Mr. Cossitt frequently 41
expressed the opinion to Mr. Wilson when I was present that he ought to be in no hurry to buy the Tennessee State bonds as they would probably go lower.

36 x Q. Have you not been a holder or representative of holders of Tennessee State bonds; if so, please state details?

A. We have always, at least for the last fifteen or twenty years, been representative of Tennessee State bonds, and we have been owners of them at 42
different periods. In the year 1866 we bought for our account seventy-six thousand dollars Tennessee State bonds and sold eighteen of them. In the year 1868 we bought ten thousand dollars and sold sixty-eight, leaving us without any on hand. In 1869 we neither bought nor sold any Tennessee State bonds for our account. In 1870 we bought seventy-five thousand dollars and we sold them the same year. In 1871 we bought $17,000, and we sold them the same year. We owned no bonds up to 1874 since 43
that time. In 1874 we bought thirty-two thousand dollars and we sold them. The next purchase we made of Tennessee bonds was in 1877, when we bought one million six hundred and forty-eight thousand dollars, which we paid over to the State for the lien it held against the Memphis & Charleston Railroad, and in 1878 we bought thirty-two thousand dollars in bonds, and sold them the same year. Since that we have bought no Tennessee bonds. 44

Adjourned to February 18, 1880.

45 February 18, 1880.

Cross-examination resumed by E. L. ANDREWS, Esq., for complainants.

37 x Q. Have you not looked at any of the comptroller's reports of the State of Tennessee.

A. I have seen some of them.

33 x Q. Have you not seen some that contained the list of the numbers and descriptions of State bonds issued to each Railroad Company?

46 A. I have seen some stating the amount of bonds issued by the State to the different railroads, but do not recollect having seen the lists of the numbers of these bonds; I saw the Comptroller's report of 1875.

39 x Q. Have you not seen Pennybacker's sheet of Tennessee bonds?

A. I do not recollect of having seen it.

40 x Q. Did Lombard, Odier & Co., or any firm in Europe that sold the substitution bonds, publish

47 any of the legal opinions that have been referred to in your examination?

A. Not to my knowledge.

41 x Q. Please name the Tennessee substitution mortgages of which you are Trustee?

A. East Tennessee, Virginia & Georgia R. R., Nashville, Chattanooga & St. Louis; I don't recollect whether I am Trustee on the Nashville & Decatur; I was on the Mobile & Ohio.

42 x Q. Did not you or your firm hold by assign-

48 ment the lien of the State of Tennessee on the Memphis & Charleston Railroad?

A. In answer I produce all the contracts and arrangements which I or my firm had in connection with the Memphis & Charleston Railroad, and herewith file the same and make it a part of my deposition as Respondents' Exhibit No. 1, W. H. D. L., Spl. Exr., & Respondent's Exhibit No. 2, W. H. D. L., Spl. Exr.

(Plaintiff's counsel moves to strike out the answer and exhibits as irresponsive to the question.) 49

43 x Q. When did you become a director of the Mobile & Ohio Railroad Co., or any member of your firm?

A. One of my sons, Mr. Adrian Iselin, Jr., has been a director of the Mobile & Ohio Railroad for some time, but do not recollect for how long, but not before 1878. I am a director of the Knoxville & Ohio Railroad; became such in 1877; I have been a director in the Nashville, Chattanooga & St. Louis Railroad, but am not now. 50

Re-direct examination by Mr. HUMES:

44 Q. When did you first learn that any holder of bonds of the State of Tennessee was setting up a claim that the lien reserved to the State belonged to and was intended to secure the payment of the State bonds issued to the railroad? 51

A. In the fall of 1877.

45 Was it before or after your firm had purchased the Memphis & Charleston lien?

A. After.

46 Q. When was the Mobile & Ohio case argued in the Supreme Court of the United States?

A. In the spring of 1878.

47 Q. Was not the appearance of their counsel in the Supreme Court on that argument the first attempt on the part of holders of bonds of Tennessee 52 to gain admittance into that suit and assert their claim to the lien?

A. As far as I know it was.

48 Q. What has been the effect of the holders of Tennessee bonds legally asserting by these suits their claim to the lien, on the substitution bonds or negotiability in the market?

53 A. It prevented the marketing of the bonds which had not already been distributed. I refer to the Memphis & Charleston Railroad substitution bonds which we bought with the intention of reselling, but when it became known that some of the holders of Tennessee State bonds intended to assert or prosecute a claim against the railroads to whom these bonds were issued, it became impossible for us to sell those bonds, and within a short time Messrs. Drexel, Morgan & Co. offered the mortgage bonds of
54 the Evansville, Henderson & Nashville Railroad, but notified the public that $800,000 of the bonds being the proportion on the road in the State of Tennessee would not be sold until the suits commenced against the railroads had been settled. The commencement of these suits had also the effect of preventing, till within a short time, any rise in the substitution bonds which had already been distributed, similar to what took place in all other kind of securities. The holders of these bonds in Europe sent back a great
55 many of these bonds and there were sales of East Tennessee, Virginia & Georgia substitution bonds as low as 96; whilst railroad bonds considered good were selling at a heavy premium. Since the first of January, however, these bonds are scarce in the market and have advanced in price. Nevertheless, no quantity of them could be sold at prices corresponding with those of other railroad bonds.

49 Q. You stated in answer to cross interrogatory 36 that you were the purchaser and seller of the
56 bonds therein stated, how were they bought and sold?

A. They were all bought and sold in the Stock Exchange.

50 Q. What were the classifications of Tennessee State Bonds, before the New York Stock Exchange from 1865 to 1877?

A. Old Tennessee State bonds and new.

51 Q. Was there any such distinction pointing 57
to the railroads to which they were issued?

A. No, there was no distinction of any kind between the bonds except that between old bonds and new, and no difference in price of old bonds.

Re-cross:

52 x Q. Have you not purchased substitution bonds of Tennessee railroads on your own account or others during the years 1879 and '80?

A. I don't believe we have bought any for our 58
own account, and whatever we may have bought for account of other parties was on specific orders given to us to buy the bonds. We bought none of such bonds for other parties when the nature of the investment to be made was left to our discretion.

---

52 Broadway, New York, 59
February 20th, 1880.

Present—Counsel as before.

Re-direct:

53 Q. Had this suit been brought before the sale and purchase of the substitution bonds, what effect would it have on this sale and responsibility?

A. I myself would have had nothing to do with 60
the bonds.

Re-cross:

54 x Q. Did you sell any substitution bonds?

A. Yes, I did.

55 x Q. How many?

A. I cannot say how many but quite a considerable amount which were sent back to us from Europe,

61 and also some Nashville, Chattanooga & Saint Louis bonds which we owned.

ADRIAN ISELIN.

Subscribed and sworn to before me, this 20th day of February, 1880.

WILLIAM H. DELANCEY,
Special Examiner.

62 I, WILLIAM H. DELANCEY, Special Examiner, duly appointed by the Circuit Court of the United States for the Western District of Tennessee, to take the testimony and proofs of both parties in the above-entitled suit, in the city of New York, do hereby certify that on the several days named in the deposition hereto annexed, I was attended at my office, No. 52 Broadway, in the city of New York, by the counsel and witness aforesaid. That the said witness was duly cautioned and sworn in
63 above-entitled suit and examined, and the deposition was reduced to writing, and read to the witness, and by him subscribed in my presence, and that the Exhibits hereto annexed, marked "Respondent's Exhibit No. 1. W. H. D. L., Special Examiner" and "Respondent's Exhibit No. 2 W. H. D. L., Special Examiner," were introduced in evidence in said cause during the taking of said deposition.

Dated February 18th, 1880.

64 WILLIAM H. DELANCEY,
Special Examiner.

65

RESPONDENTS' EXHIBIT No. 1.

W. H. D. L., Spl. Exr.

AN INDENTURE, made the twentieth day of August, eighteen hundred and seventy-seven, between the Memphis and Charleston Railroad Company, a corporation duly created and organized by and under the laws of the respective States of Tennessee and Alabama and Mississippi, party of the first part, and the Farmers Loan and Trust Company, a corporation created by the laws of the State of New York, and located in the city of New York, party of the second part. 66

WHEREAS, the said party of the first part now possesses, owns, and is operating its main line of railroad, extending from Memphis, in the State of Tennessee, via Corinth, in the State of Mississippi, and Huntsville, in the State of Alabama, to Stevenson, in the State of Alabama, a distance of two hundred and seventy-two miles or thereabouts, 67 together with a branch thereof in the State of Tennessee, known as the Somerville and Moscow branch, extending from Moscow, on the main line to Somerville, a distance of about fourteen miles, and the branch thereof in the State of Alabama, extending from Tuscumbia, on the main line to Florence, a distance of about five miles; and also the Washington street branch, so called, extending from the Memphis and Charleston Railroad depot, in the city of Memphis, through Washington street 68 and Center Landing, to the Mississippi river, a distance of about one mile; and also certain rights and privileges for transportation of its passengers and freight in its own cars over the railroad running between Stevenson, in Alabama, and Chattanooga, in Tennessee, under and in virtue of a certain contract, of June twenty-third and July twenty-sixth,

eighteen hundred and fifty-eight, made between the said Memphis and Charleston Railroad Company; and the said party of the first part also owns and possesses the rolling stock, or equipment and machinery for the operation of its said railroad and branches; and also the depots and grounds and buildings and other appurtenances of and for uses and purposes of its said railroad and branches, and other real estate situate upon and along the line of its road, and the other things hereinafter described and mortgaged.

And Whereas, all those parts of the said railroad, as well branch as main line, which are situate in the State of Tennessee, with the lands and premises thereunto appertaining, embracing all the real estate of the said party of the first part, situate in the State of Tennessee, with the improvements thereon, and the rolling stock or equipment, and other appurtenances thereof, are subject to a first and paramount statutory lien, in the nature of a mortgage, originally created and existing in favor of certain Tennessee State Bonds, loaned, or advanced, or delivered to, or in aid of said railroad company, by the State of Tennessee, under and in pursuance of the General Internal Improvement Laws of that State, and for or in respect of the amount of principal and interest, of which State bonds, thus loaned, advanced or delivered the said the Memphis and Charleston Railroad Company became indebted to the State of Tennesse, and which indebtedness of said railroad company to said State, and the lien held by the said State therefor, have been recently, with the consent and approbation of the said the Memphis and Charleston Railroad Company, and of its Board of Directors, duly assigned and transferred by said State to and are now held and owned by Adrian Iselin and

Adrian Iselin, Junior, composing the firm of A. 73
Iselin & Co., of the city of New York, in the like position and with the like rights to enforce the same, as the said State had, which assignment and transfer was made and effected under and in pursuance of the Act of the Legislature of the State of Tennessee, entitled "An Act to liquidate the State debt contracted in aid of railroad companies in the State of Tennessee," passed February 25th, 1869, and the other laws of said State in that behalf, and the amount of such indebtedness of said party 74
of the first part, and of the attendant lien therefor upon its said railroad and other property, in the State of Tennessee, thus assigned to and now held by said Adrian Iselin and Adrian Iselin, Junior, including the interest accrued thereon to the first day of July, eighteen hundred and seventy-seven, is seventeen hundred and thirty-six thousand nine hundred and six dollars and twenty-five cents, and the principal thereof bears interest from the said first day of July, eighteen hundred and seventy- 75
seven, at the rate of six per cent. per annum.

AND WHEREAS there are now outstanding and unpaid, as debts of the said party of the first part, twelve hundred and ninety-three thousand dollars in amount of the so-called first mortgage bonds of the said The Memphis and Charleston Railroad Company, issued under and secured by said Company's so-called first mortgage or deed of trust, dated May first, eighteen hundred and forty-four, to James Punnett, G. B. Lamar and Thomas Fearn, as 76
trustees, covering the said Railroad Company's line of railroad, situated in the States of Alabama and Mississippi respectively, with the appurtenances and equipment thereof, as a first mortgage lien thereon, and likewise covering the said Railroad Company's line of railroad in the State of Tennessee, with the appurtenances and equipments thereof,

77 subject and subsequently to the prior and paramount lien and encumbrance thereon of the abovementioned debt and lien originally existing in favor of the State of Tennessee, and now held by Adrian Iselin and Adrian Iselin, junior, the principal of the said so-called first mortgage bonds, for twelve hundred and ninety-three thousand dollars, falling due and payable on the 1st day of May, eighteen hundred and eighty, and the said bonds in the meantime bearing interest at the rate of seven per cent. per
78 annum, payable semi-annually on the first days of May and November.

And whereas there are also now outstanding and unpaid, as debts of the said party of the first part, one million dollars in amount of the so-called second mortgage bonds of the said The Memphis and Charleston Railroad Company, issued under and secured by said Company's so called second mortgage or deed of trust, dated January first, eighteen hun-
79 dred and sixty-seven, to Gustavus L. Mastin, George W. Neal and William C. Rehen, as trustees, covering the same premises as the said so-called first mortgage, but subject to the prior lien and encumbrance of such so-called first mortgage, and in like manner therewith subject, so far as respects the said line of railroad, in the State of Tennessee, and the appurtenances and equipment thereof, to the prior and paramount lien and encumbrance thereon of the said debt and lien, originally existing in favor
80 of the State of Tennessee, and now held by Adrian Iselin and Adrian Iselin, junior, as aforesaid, the principal of the said so-called second mortgage bonds, for one million dollars, falling due and payable on the first day of January, eighteen hundred and eighty five, and the said bonds in the meantime bearing interest at the rate of senen per cent. per annum, payable semi-annually on the first days of January and July.

AND WHEREAS the said party of the first part is 81
subject to certain further indebtedness, for the liquidation whereof it needs to make provision.

AND WHEREAS the said Adrian Iselin, and Adrian Iselin, junior, have expressed their willingness in a certain manner, and upon certain conditions, to make a certain eventual deduction or discount from the full amount now due or owing to them, upon the said indebtedness and lien, originally existing in favor of the State of Tennessee, which has been 82
assigned to and is now held by them as aforesaid, provided the said Railroad Company will give to them such additional collateral security for such indebtedness upon the terms and conditions hereinafter mentioned in that behalf, and enter into and carry out such arrangements with them in respect of the eventual liquidation and satisfaction of said indebtedness as are hereinafter stated.

AND WHEREAS, in the exercise of the powers in 83
that behalf possessed by it, under the laws of the respective States of Tennessee, Alabama, and Mississippi, in order to provide for further securing the payment of its aforesaid indebtedness, originally existing in favor of the State of Tennessee, assigned and transferred to, and now held by Adrian Iselin, and Adrian Iselin, Junior, as aforesaid, and also to make such provision as is hereinafter contained or declared, for the eventual liquidation and satisfaction of that indebtedness, with the interest accru- 84
ing and to accrue thereon, from and after the first day of July, eighteen hundred and seventy-seven, and likewise in order to provide for taking up and discharging its above mentioned, now outstanding, first mortgage bonds, so called, for twelve hundred and ninety-three thousand dollars, with the interest thereon, and its second mortgage bonds, so called,

for one million dollars, with the interest thereon, and its other now existing indebtedness hereinbefore referred to, and thus to consolidate and arrange its debts, as by law it is entitled to do, and for other lawful uses and purposes of its business, and agreeably to the laws regulating it. The said The Memphis and Charleston Railroad Company, in accordance with resolutions of its shareholders, and of its Board of Directors, at meetings of such shareholders, and such Board of Directors, respectively, duly and regularly held, has caused to be prepared and made ready for execution, under its corporate seal, with the signatures of its President and Treasurer, respectively, and for subsequent issue, negotiation and use, as hereinafter provided, its certain, so called, consolidated first mortgage bonds, for the aggregate amount of four millions seven hundred thousand dollars of United States Gold Coin, consisting of four thousand seven hundred of such bonds, numbered consecutively from 1 (one) to 4,700 (four thousand seven hundred), both inclusive, bearing date respectively the twentieth day of August, eighteen hundred and seventy-seven, each of such bonds being for the payment to the holder thereof, on the first day of January, nineteen hundred and fifteen, in the City of New York, of one thousand dollars, in United States Gold Coin, and for the payment of interest thereon from the first day of July, eighteen hundred and seventy-seven, and in the meantime, at the rate of seven per cent. per annum, in like Gold Coin, in the City of New York, semi-annually, on the first days of January and July, in each year, on presentation and surrender of the coupons, or interest warrants for such interest, to such bond annexed, and in accordance with resolutions, both of its shareholders and its Board of Directors, repectively, duly held, has determined to secure the payment of

the principal and interest of said bonds, which shall be issued within the said aggregate limit of four millions seven hundred thousand dollars, by this mortgage, in the manner and to the effect hereinafter expressed.

AND WHEREAS, the form of such bonds, and of the coupons, or interest warrants to be annexed thereto, and of the trustee's certificate to be endorsed thereon by the Trustee of this mortgage, viz.: the said party of the second part hereto, and to be executed on behalf of the said party of the second part hereto by its president are to be substantially as follows:

UNITED STATES OF AMERICA,

[NUMBER.] CONSOLIDATED [NUMBER.]

FIRST MORTGAGE BOND

The Memphis and Charleston Railroad Company.

INTEREST PAYABLE SEMI-ANNUALLY, JANUARY AND JULY.

[1000] [VIGNETTE.] [1000]

The Memphis and Charleston Railroad Company promises, for value received, to pay to the holder of this bond, on the first day of January, nineteen hundred and fifteen, the sum of one thousand dollars, in United States Gold Coin, in the City of New York, with interest thereon in the meantime at the rate of seven per cent. per annum, payable in like gold coin, in the City of New York, semi-annually, on the first days of January and July in each year, on presentation and surrender of the annexed interest warrants.

This bond, with others issued or to be issued, amounting to not more than four millions seven hundred thousand dollars, is secured by a mortgage

of said Company's road, franchises and equipment, as provided in an indenture of trust and mortgage made to the Farmers' Loan and Trust Company of the City of New York, dated the twentieth day of August, eighteen hundred and seventy-seven. This bond shall pass by delivery or by transfer on the books of the Company. After a registration of ownership, certified hereon by the Transfer Company, no transfer except on the books of the Agent of the Company shall be valid unless the last transfer be to bearer.

In witness whereof, the said Company hath hereunto affixed its corporate seal, and caused this bond to be signed by its [L. S.] President and Treasurer, this twentieth day of August, eighteen hundred and seventy-seven.

President.

[VIGNETTE.]

Treasurer.

FORM OF COUPON.

$35	On the first day of January, 18—, the Memphis and Charleston Railroad Company will pay to bearer, in the City of New York, in United States gold coin, Thirty-five Dollars, being for semi-annual interest on bond No.	$35
	Treas.	

FORM OF TRUSTEES CERTIFICATE.

We hereby certify that this is one of the Bonds issued under the Mortgage therein referred to.

THE FARMERS LOAN AND TRUST CO., TRUSTEES,

by *President.*

and none of which bonds are to be entitled to share 97
in the benefit or security of this mortgage unless
they shall have endorsed thereon such certificate of
the Trustee hereunder, or its successor or succes-
sors in the trust, and which coupons are to be issued
with the engraved signature of the Treasurer of
said Railroad Company, and when thus issued by
said Railroad Company, it is hereby by it agreed
shall be as binding upon it as if such signature were
written by said Treasurer.

NOW, THIS INDENTURE WITNESSETH, that in or- 98
der to secure the due and punctual payment of the
principal and interest mentioned in, and to become
payable upon the above mentioned bonds, within
the said aggregate limit of four millions seven hun-
dred thousand dollars, in United States gold coin,
and of the coupons accompanying the same, ac-
cording to the tenor and effect of such bonds and
coupons, respectively, and in consideration of the
premises aforesaid, and of one dollar to the said
party of the first part in hand paid by the said 99
party of the second part, at and before the unseal-
ing and delivery of these presents, the receipt
whereof is hereby acknowledged, the said The Mem-
phis and Charleston Railroad Company, party of
the first part, HATH granted, bargained, sold, con-
veyed, assigned, transferred, and set over, and by
these presents DOTH grant, bargain, sell, convey,
assign, transfer, and set over, unto the said The
Farmers' Loan and Trust Company, party of the
second part, and to its successors and assigns for- 100
ever, ALL and singular the main line of Railroad of
the said Memphis and Charleston Railroad Com-
pany, extending from the point of commencement
thereof, in the City of Memphis, in the State of
Tennessee, via Corinth, in the State of Mississippi,
and Huntsville, in the State of Alabama, to the
terminus thereof in Stevenson, in the said State of

Alabama, connecting there with the Nashville and Chattanooga Railroad, being a distance of two hundred and seventy-two miles, be the same more or less, and also the branch of said Railroad, situate in the State of Tennessse, known as the Somerville and Moscow Branch, extending from Moscow, on the main line to Somerville, a distance of about fourteen miles, be the same more or less; and also the branch of said railroad, situate in the State of Alabama, extending from Tuscumbia, on the mainland to Florence, a distance of about five miles, be the same more or less, and including the bridge across the Tennessee River, near Florence; and also the Washington Street branch so-called of said railroad, extending from the depot of said main line, in the City of Memphis through Washington Street and Centre Landing to the Mississippi River and the depot grounds and wharves on said river, and all the rights and privileges of said Railroad Company in respect of the use of the streets and the wharves and levee on the Mississippi river; and also all and singular the rights of transportation of the passenger cars and freight cars of the said party of the first part on and over the railroad between Stevenson, in Alabama, and Chattanooga, in Tennessee, which the party of the first part has or is entitled to, or can, or could, now or hereafter claim under or in virtue of the contract of the date of June twenty-third and July twenty-sixth, eighteen hundred and fifty-eight, made between the Memphis and Charleston Railroad Company and the Nashville and Chattanooga Railroad Company, and all the rights and privileges whatsoever, for or in respect of the use of or transportation over the line of railroad between Stevenson and Chattanooga, now belonging to the Nashville, Chattanooga and Saint Louis Railway Company, which the said party of the first part holds or is in any wise en-

titled unto, or can, or could now or at any time 105
hereafter, claim either under or in virtue of the
before-mentioned contract of June and July, eigh-
teen hundred and fifty-eight, or otherwise how-
soever, together with all and singular the roadway
or track of the aforesaid main line of railroad, ex-
tending from Memphis to Stevenson, as aforesaid,
and of the said several branches respectively, and
the superstructure and rails laid or to be laid there-
on respectively, and all the appurtenances thereof,
and all the sidings, turnouts, bridges, wharves, 106
viaducts, culverts, walls, fences, ways and rights of
way, depots, station-houses, engine-houses, car-
houses, freight-houses, wood-houses, depot grounds,
and lands procured, provided, or intended for use
for that purpose, building and repair shops, ma-
chine shops, and lands used or procured, or in-
tended for sites thereof, and other buildings, struc-
tures, lands or improvements whatsoever, leases
and leasehold interests, contracts, easements and
privileges now belonging or appertaining to, or used, 107
or procured, or designed to be used for the pur-
poses of, or in connection with, the said main line
of railroad and branches respectively, or the main-
tenance or operation thereof, or of any part thereof,
or which shall at any time hereafter belong or apper-
tain to, or be used, or procured, or obtained with
the design of being used for the purposes of or in
connection with said main line of railroad and
branches respectively, or the maintenance or opera-
tion thereof, or of any part thereof, and also all the 108
locomotives, tenders, passenger cars, baggage cars,
freight cars and other cars, and all other rolling
stock or equipment, and all machinery, tools and
implements, rails, chairs and spikes, and other ma-
terials whatsoever now owned or possessed by the
said party of the first part, or which shall at any
time or times hereafter be acquired, owned, or pos-

sessed by the said party of the first part, or its successors, for the uses or purposes of, or designed for use, in connection with or for the operation, maintenance or reparation of the said main line of railroad and branches respectively, or the equipment or appurtenances thereof, and all the engines, cars and rolling stock or equipment of any kind, machinery, tools, implements, rails and other materials, which shall at any time or times hereafter belong or appertain to, or be in use, or on hand designed for use, for the purposes of said main line of railroad and branches, respectively, or any part thereof, and all the lands and real estate whatsoever of any and every kind whatsoever, and all improvements thereon, situate in the States of Tennessee, Alabama, and Mississippi, respectively, which are now owned or possessed by, or which now belong to the said party of the first part, and also all and singular the rights, privileges, and franchises whatsoever, which the said party of the first part now holds, possesses, or is entitled unto, and also all franchises, rights and privileges whatsoever, which the said party of the first part shall hereafter acquire or become possessed of, or entitled unto, for and in respect of or for the uses or purposes of the said main line of railroad and branches, respectively, or the operation or maintenance thereof; and also all the tolls and income of the said main line of railroad and branches, respectively, together with all and singular the tenements, hereditaments and appurtenances unto the premises aforesaid, or any of them, or any part thereof, belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well at law as in equity, of the said party of the first part, of, in and to the same and every part and

parcel thereof, with the appurtenances, but subject 113
always to the prior and paramount lien now held by
Adrian Iselin and Adrian Iselin, Junior, upon such
part of the said railroad and branches as is situate
in the State of Tennessee, and upon all the rolling
stock and equipment thereunto belonging or appertaining, and upon all that portion of the said hereby
mortgaged premises or property which is situate in
the State of Tennessee, for the amount of the aforesaid indebtedness of said party of the first part,
originally existing in favor of the State of Tennessee, 114
and assigned by said State to, and now held by
Adrian Iselin and Adrian Iselin, Junior, as aforesaid, which lien it is expressly understood and
hereby agreed and declared, is to remain in full
force and effect as a lien in favor of said Adrian
Iselin and Adrian Iselin, Junior, and their representatives or assigns, prior and paramount to the
lien created by this indenture, until the indebtedness for which such lien is held shall be paid and
satisfied or discharged; and the same is, or is to be, 115
expressly confirmed and further assured by the said
Memphis and Charleston Railroad Company to the
said Adrian Iselin and Adrian Iselin, Junior, and
their representatives and assigns, as a good and
valid lien prior to this Indenture of Mortgage upon
all that part of the hereby mortgaged premises
which is situate in the State of Tennessee, including
the rolling stock or equipment and other chattel
property belonging or appertaining to the portion
of said railroad line, in the State of Tennessee, for 116
the above-mentioned amount of seventeen hundred
and thirty-six thousand nine hundred and six dollars and twenty-five cents, with the interest thereon
accrued and to accrue from and after July first,
eighteen hundred and seventy-seven, and with the
assurance, confirmation and grant by said Railroad
Company to said Adrian Iselin and Adrian Iselin,

117 Junior, of appropriate remedies for enforcing and effectuating said lien and the security thereof, and of the said indebtedness.

To HAVE AND TO HOLD all and singular the said main line of railroad and branches respectively, with their appurtenances and rolling stock and equipment, present and future, and all other the premises, properties, rights, interests and franchises, immunities, privileges and other things aforesaid, subject
118 to the said prior lien in favor of Adrian Iselin and Adrian Iselin, Junior, and their representatives or assigns as aforesaid, unto the said party of the second part, as trustee as aforesaid, and its successors and assigns for ever, in trust for the equal *pro rata* use, benefit and security of all the persons and corporations who shall become or be the owners or lawful holders of any of the said bonds within the aggregate amount of four million seven hundred thousand dollars, intended to be hereby secured as
119 aforesaid, without preference of any of the said bonds over any of the others by reason of priority in the time of the issuing or negotiation thereof, but with such special rights, nevertheless, to the holders of the fourteen hundred of such bonds, numbered from one to fourteen hundred inclusive, as are hereinafter in that behalf declared and provided for.

PROVIDED ALWAYS, nevertheless, and these presents are upon the express condition, that if the said
120 party of the first part shall well and truly pay and satisfy the said bonds to the aggregate amount of four million seven hundred thousand dollars hereby intended to be secured as aforesaid, or such of the same as shall be issued, and the interest from time to time accruing thereon, according to the tenor and effect of the said bonds and the coupons or interest warrants accompanying the same, then this indent-

ure and all and singular the estates, rights and in- 121
terests hereby granted to or vested in the said party of the second part shall cease, determine, and become of no effect.

AND IT IS HEREBY UNDERSTOOD, DECLARED, GRANTED, AGREED AND PROVIDED, that of the aforesaid bonds to the aggregate amount of four million seven hundred thousand dollars designed to be issued under and secured by this indenture as aforesaid, fourteen hundred thousand dollars in 122
amount thereof, being the fourteen hundred of such bonds for one thousand dollars each, numbered from one (1) to 1400 (fourteen hundred) inclusive, are appropriated, designed and intended to be used and applied by the said party of the first part for the purpose and in the manner following; that is to say, the same are to be transferred and delivered by the said railroad company, party of the first part, to the said Adrian Iselin and Adrian Iselin, Junior, as an additional collateral secu- 123
rity to them and their representatives and assigns for the aforesaid indebtedness of the said railroad company originally existing in favor of said State of Tennessee, and assigned and transferred to and now held by said Adrian Iselin and Adrian Iselin, Junior, as aforesaid, and now amounting, as aforesaid, to seventeen hundred and thirty-six thousand nine hundred dollars and twenty-five cents, besides the interest accrued and to accrue thereon from and after the first day of July, eighteen hundred 124
and seventy-seven, under an arrangement and agreement between said railroad company, party of the first part hereto, and said Adrian Iselin and Adrian Iselin, Junior, by which such transfer and delivery to them of the said fourteen hundred bonds is not in anywise to operate as a payment of or upon account of the said indebtedness held by them under

transfer from the State of Tennessee, nor is the same to diminish, impair or affect the said prior and paramount lien for the amount of such indebtedness, and the interest accrued and to accrue thereon upon the said portion of said railroad situate in the State of Tennessee, with its appurtenances and equipment, and the other property in the said State which originally existed in favor of the State of Tennessee, and is now held by Adrian Iselin and Adrian Iselin, Junior, under transfer from said State as aforesaid; but that notwithstanding such transfer and delivery to said Adrian Iselin, and Adrian, Junior, of said fourteen hundred bonds, the said debt against said railroad company now held by them under transfer from the State of Tennessee, and the lien thereof originally existing in favor of said State, and vested in them by transfer as aforesaid, and all the rights and remedies and securities of said Adrian Iselin and Adrian Iselin, Junior, for the security of such indebtedness originally existing in favor of the State, with the interest accrued and hereafter to accrue thereon, and for enforcement of the lien thereof, are to remain in full force and effect, as if such fourteen hundred bonds had not been transferred and delivered as additional security therefor as aforesaid.

Provided, however, that all sums of money which shall be actually paid by said railroad company on account of interest or principal upon such fourteen hundred bonds, or either of them, either to said Adrian Iselin and Adrian Iselin, Junior, or to any one holding any of such bonds by or under transfer from them, are, when such payments respectively are actually made and realized in cash, and not before to be credited as payments on account of the said original indebtedness to the State of Tennessee assigned to Adrian Iselin and Adrian Iselin, Junior, as aforesaid, reckoning for the purpose of such credit such payments made in gold at the value thereof, in United

States legal tender currency at the time of such pay- 129
ment; which payments received for interest on such fourteen hundred bonds, numbers one to fourteen hundred inclusive, are to be credited on account of the interest accruing subsequently to July first, eighteen hundred and seventy-seven, on said indebtedness originally existing in favor of the State, and assigned to Adrian Iselin and Adrian Iselin, Junior, as aforesaid, and which payments, if any, received for on account of principal of such fourteen hundred bonds shall be applied on account of the 130
principal of such indebtedness originally existing in favor of the State, and by it assigned over as aforesaid, and the interest thereon accrued up to July first, eighteen hundred and seventy-seven; and with the further provision in such arrangement that said Adrian Iselin and Adrian Iselin, Junior, shall be entitled to sell or otherwise dispose of and to transfer to any person or persons or corporations any of the said fourteen hundred bonds so transferred and delivered to them as they may deem fit, 131
without thereby prejudicing or affecting the said original indebtedness to the State so assigned to them, or the said lien held therefor, or the rights or remedies of themselves or their asssigns in respect thereof, and without subjecting themselves or their assigns to any present credit upon such indebtedness for or in respect of such bonds so sold or so disposed of or transferred, but subject to the aforesaid obligation to give credit on such indebtedness for all payments which shall be made 132
for principal or interest on such bouds so sold or disposed of or transferred when such payments are actually made and realized in cash, qut not before; and under the further understanding and arrangement that said Adrian Iselin and Adrian Iselin, Junior, in anticipation of making sales or dispositions or transfers of such

133 fourteen hundred bonds or portions thereof, shall be at liberty to assign and transfer the said original indebtedness of the Railroad Company to the State, and the State's lien therefor transferred to them as aforesaid, and all their present and future rights and remedies in respect thereof to a trustee or trustees, to be held for the equal *pro rata* benefit of the holders from time to time of such fourteen hundred bonds, numbers one to fourteen hundred, inclusive, and so as that proportionate beneficial
134 or equitable interests in the said indebtedness originally existing in favor of the State, including the interest thereon accrued and hereafter to accrue, and in the lien which was held by the State therefor, and in the rights and remedies in respect thereof may invest in equitable or beneficial interest in the holders from time to time of such fourteen hundred collateral bonds, numbers one to fourteen hundred, inclusive, including the said Adrian Iselin and Adrian Iselin, Junior, themselves, in respect of
135 so many of said fourteen hundred bonds as may remain in their hands untransferred and undisposed of by them, with *pro rata* equality in proportion to the respective amounts held by such parties respectively of such fourteen hundred bonds, and so that the holder of each of such fourteen hundred bonds, numbers one to fourteen hundred, inclusive, may be entitled to a proportionate beneficial interest in such amount or proportion of the said indebtedness originally existing in favor of the State, with the
136 interest thereon accrued and to accrue, and the said liens and rights held for the security thereof corresponding with the principal and interest of such bond so held by him, and with the proper proportionate addition thereto by reason of the principal and interest of such bond being payable in gold instead of currency; but the legal title to such original indebtness, with its attendant liens and securi-

ties, shall remain in the said trustees to whom the 137
same shall be transferred by the said Adrian Iselin
and Adrian Iselin, Junior, in trust for the holders
of said fourteen hundred collateral bonds, to the end
and intent that notwithstanding any sale or other
disposition or transfer which may be made of such
fourteen hundred collateral bonds, the said original
debt and lien preserved in full force, and the said
bonds held as further collateral security may in
substance and effect be beneficially held by or for
account of the same persons, and that the parties 138
may substantially, in respect of beneficial or equit-
able interests, be in like positions as if the said
original debt and lien and said collateral bonds had
all continued to be held by said Adrian Iselin and
Adrian Iselin, Junior, or had been altogether as-
signed over by them to the same person or persons.

And inasmuch as under such proposed arrange-
ment, and in virtue of the terms and conditions of
this mortgage and the bonds thereby secured, there
will exist a double lien and security for substanti- 139
ally the same amount or indebtedness in favor of
the holders of said debt and lien, originally held by
the State of Tennessee, and assigned over to Adrian
Iselin and Adrian Iselin, Junior, as aforesaid, and
preserved and kept in force in the hands of the trus-
tee, to whom the same is to be assigned as aforesaid,
and of the holders of the said fourteen hundred
bonds, numbers one to fourteen hundred, inclusive,
held as further collateral security therefor, and
which double lien, as to a part thereof, will exist 140
upon the same subject matter—viz: The said rail-
road in Tennessee, with its appurtenances and
equipment, and the other property in the State
which is subject to the State lien, now it is hereby
declared, provided, granted, declared and agreed
that such double lien and security is intended to
and shall exist, and that neither lien or security

shall prejudice the efficacy of the other; that the said State lien, held by assignment as aforesaid, may be enforced, and all rights and remedies in respect thereof may be held and had as fully and completely and effectually as if the lien and security in favor of the holders of such fourteen hundred bonds as further collateral security, as aforesaid, did not exist, and that the holders, from time to time, of such fourteen hundred bonds, so transferred by way of further collateral security for such original debt, shall be entitled as fully and completely and effectually as if the said original lien and security for the original debt, as further security for which said fourteen hundred bonds are transferred, did not exist to their equal *pro rata* share and proportion in like manner with the holders of the other bonds, numbers (1401) fourteen hundred and one to (4700) four thousand seven hundred inclusive, to be issued under and secured by this mortgage, or such of such other bonds as may from time to time be outstanding, of the benefit of all securities and liens provided by this mortgage, and of the proceeds and fruits thereof, and of any foreclosure or enforcement of the same, including as well the mortgaged premises situate in Alabama and Mississippi as the other mortgaged premises, save and except that if, prior to making apportionment and distribution between the holders of the bonds secured by the indenture of mortgage, of the net proceeds of any foreclosure or other legal enforcement thereof, any net sum shall have been actually collected and realized in cash by means of legal enforcement of the said lien originally held by the State of Tennessee, and assigned over to Adrian Iselin and Adrian Iselin, Junior, as aforesaid, by giving proper credit wherefor, after first deducting therefrom all proper expenses and charges incurred in respect of the proceedings for such enforcement

and collection, including the compensation of the said trustee, to whom the same shall be so assigned by said Adrian Iselin and Adrian Iselin, Junior, in respect thereof, the then unpaid amount of the said indebtedness of the railroad company, originally existing in favor of the State, and by it transferred over as aforesaid, and as collateral security for which said fourteen hundred bonds, numbers one to fourteen hundred inclusive, shall be held as aforesaid, shall be reduced below the principal of such fourteen hundred bonds and the interest thereon accrued and unpaid at the time of such apportionment and distribution, having due regard to the circumstance that said bonds are payable in gold, and therefore reducing the amount of such net credits or deductions to the value thereof in gold when collected and realized, then, and in such case, for the purposes of making such apportionment and distribution between the respective bondholders secured by this indenture of mortgage, of the net proceeds of such foreclosure or other legal enforcement of this mortgage, the said fourteen hundred bonds, numbers one to fourteen hundred inclusive, instead of being reckoned at their face value, with their accrued and unpaid interest, shall be reckoned as being only for an amount equal to such reduced amount, computed as aforesaid, remaining unpaid at the time of such apportionment and distribution upon the said indebtedness of said railroad company, originally existing in favor of the State of Tennessee, and by it transferred over as aforesaid, and for which the said fourteen hundred bonds shall stand as security as aforesaid, and such apportionment and distribution between said fourteen hundred bonds and the other then outstanding bonds hereby secured shall be made accordingly; and it being always understood, agreed and provided that the double lien and security,

as aforesaid, will not and shall not be allowed so to operate as to produce an actual double payment or satisfaction of the same substantial debt, but that all payments actually received and realized in money, by means of either security, will and shall, to the extent of such actual payments realized, go in reduction of said original debt and of said collateral bonds held as security therefor, but making the proper allowance for difference between gold and currency as aforesaid.

AND IT IS FURTHER DECLARED AND UNDERSTOOD that it will be made a part of the said arrangement between said railroad company and said Adrian Iselin and Adrian Iselin, Junior, that said Adrian Iselin and Adrian Iselin Junior, shall consent so far to reduce the amount of their said claim and demand against said railroad company and the lien and security therefor, under the said assignment and transfer from the State of Tennessee to them, as that, when they or their assigns shall have actually received and realized in cash, by net payments, as on account of the principal of the said indebtedness of seventeen hundred and thirty-six thousand nine hundred and six dollars and twenty-five cents, in United States legal tender currency, due July first, eighteen hundred and seventy-seven, a sum equal to fourteen hundred thousand dollars in United States gold coin, reducing currency realizations or payments to gold values as aforesaid, and shall likewise have actually received and realized in cash, by net payments, as on account of interest accrueing at the rate of six per cent per annum, payable semi-annually on the first days of January and July, upon the said currency indebtedness of seventeen hundred and thirty-six thousand nine hundred and six dollars and twenty-five cents, a sum equal to seven per

cent per annum in United States gold coin, from 153
the first day of July, eighteen hundred and seventy-seven, payable semi-annually on the first days of January and July, upon such sum of fourteen hundred thousand dollars gold, until payment and realization in cash, as aforesaid, of that principal sum, reducing currency realizations or payments to gold values as aforesaid, the residue of such currency indebtedness of seventeen hundred and thirty-six thousand nine hundred and six dollars and twenty-five cents, and of the interest accruing 154
thereon, from and after July first, eighteen hundred and seventy-seven, shall be thereupon given up, released and discharged to the said Railroad Company; provided, however, as a condition thereof that said Railroad Company shall bear, pay and discharge all the expenses and charges attendant upon the collection and receipt of such monies on account of the principal or interest, or either of such indebtedness originally existing in favor of the State, and of all legal and other proceedings had or 155
taken for the recovery thereof, including the compensation of such trustee in respect of such collection, receipt and legal and other proceedings; and that this stipulation and agreement shall bind the representatives and assigns of said Adrian Iselin and Adrian Iselin, Junior, including the trustee to whom such original debt and lien is to be so assigned, and that for the purposes thereof all cash payments received and realized for principal or interest upon such fourteen hundred bonds, numbers one to four- 156
teen hundred inclusive, or any of them, by parties holding such bonds under transfer from said Adrian Iselin and Adrian Iselin, Junior, shall be of like legal affect as if such monies were received by said Adrian Iselin and Adrian Iselin, Junior.

AND IT IS HEREBY FURTHER PROVIDED, DE-

157 CLARED, GRANTED AND AGREED by and between the parties hereto that fourteen hundred and thirty-six thousand dollars in amount of the bonds issuable under and intended to be secured by this indenture, that is to say, such bonds for one thousand dollars each, numbered from 1401 (fourteen hundred and one) to 2836 (twenty-eight hundred and thirty-six), both inclusive, are specially reserved and appropriated for the purpose of taking up and discharging the before-mentioned twelve hundred and ninety-
158 three thousand dollars, in amount of now outstanding first mortgage bonds of said Railroad Company, issued under and secured by its said first mortgage so called, dated May first, eighteen hundred and fifty-four, and said fourteen hundred and thirty-six bonds so appropriated are to be reserved in the hands of the Trustee hereunder, unissued until the same shall be actually applied to such purpose as herein next provided, to which end the said Trustee is hereby authorized to and shall deliver over such
159 reserved fourteen hundred and thirty-six bonds to the said Railroad Company, for use and negotiation by it, when and in proportion as the said Railroad Company shall deliver up to the said Trustee in a cancelled condition such twelve hundred and ninety-three now outstanding first mortgage bonds, the said Trustee delivering over such reserved new bonds to said Company, as aforesaid, at the rate of ten thousand dollars thereof for each nine thousand dollars of principal amount of such now outstand-
160 ing first mortgage bonds, so delivered over in cancelled condition to said Trustee. And it is further provided, declared, granted and agreed that a further amount of one million dollars of the bonds issuable under and intended to be secured by this indenture, that is to say, such bonds for one thousand dollars each, numbered from 2,836 (twenty-eight hundred and thirty-seven) to 3,838 (thirty-

eight hundred and thirty-six), both inclusive, are 161
specially reserved and appropriated for the purpose
of taking up and discharging the before mentioned
one million dollars in amount of now outstanding
ing second mortgage bonds of said railroad
company, issued under and secured by its said,
so called, second mortgage, dated January first,
eighteen hundred and sixty-seven, and said one
thousand bonds so appropriated are to be reserved
in the hands of the Trustee hereunder, unissued,
until the same shall be actually applied to such 162
purpose as herein next provided, to which end the
said Trustee is hereby authorized to, and shall de-
liver over such reserved one thousand bonds to the
said Railroad Company, for use and negotiation by
it, when and in proportion as the said Railroad
Company shall deliver up to said Trustee, in a can-
celled condition, such now outstanding one thous-
and second mortgage bonds, the said Trustee deliv-
ering over such reserved new bonds to said Com-
pany, as aforesaid, at the rate of one thousand dol- 163
lars thereof for each one thousand dollars of princi-
pal of such second mortgage bonds, so delivered to
it in a cancelled condition. And it is hereby pro-
vided, declared and agreed that said party of the
second part must not and shall not permit to be
issued as certified or countersigned by it, the said
twenty-four hundred and thirty-six bonds, numbers
1,401 (fourteen hundred and one) to 3,836 (thirty-
eight hundred and thirty-six), which are reserved
for taking up and providing for such outstanding 164
first and second mortgage bonds, as aforesaid, ex-
cept under and in conformity with the foregoing
provisions and limits in respect thereof: PROVIDED,
HOWEVER, that, in case said Railroad Company
shall arrange with any holders of such now out-
standing first and second mortgage bonds for an
extension of time of payment thereon, and for giv-

ing as additional security therefor, or for the indebtedness represented thereby, such new bonds hereby reserved, for providing for the same at rates not exceeding ten thousand dollars of such new bonds for each nine thousand dollars of such now outstanding first mortgage bonds, and not exceeding one thousand dollars of such new bonds for each one thousand dollars of such now outstanding second mortgage bonds, and for depositing both such old extended bonds, and such new collateral bonds with some responsible Trust Company in the City of New York, or other agreed depository in said City, satisfactory to the party of the second part, under such agreement of trust, or otherwise, as may be fixed upon with a view to avoiding the risk to the Railroad Company, and its other creditors, of a double payment upon such indebtedness thus extended and secured; the said party of the second part hereto shall be, and hereby is, authorized and required to give effect to such arrangement, and to deliver over in accordance therewith such reserved new bonds to such agreed Trust Company, or other depository, anything hereinbefore contained to the contrary notwithstanding.

IT IS FURTHER UNDERSTOOD, DECLARED AND PROVIDED, That as to the issue and negotiation of the bonds issued under and secured by this mortgage other than the twenty-four hundred and thirty-six bonds so appropriated and reserved for taking up said first and second mortgage bonds, the said party of the second part assumes no responsibility and is to exercise no supervision, but is to countersign or certify and deliver over to the said Railway Company for transfer or negotiation by it without supervision the said other bonds—that is to say, those numbered from one to fourteen hundred inclusive, and those numbered from thirty-eight hundred and

thirty-seven to four thousand seven hundred inclu- 169
sive.

AND IT IS FURTHER PROVIDED, DECLARED AND AGREED, That the said party of the first part reserves to itself and it shall have and possess the right and privilege, anything hereinbefore contained to the contrary notwithstanding, to agree with the holders of all or any of the said now outstanding first mortgage bonds and second mortgage bonds respectively for an extension of time of pay- 170
ment thereof, at rates of interest not exceeding those which the said bonds now bear, and for preserving, keeping in full force and effect, and if necessary or desirable renewing as a lien or liens prior and superior to the lien of this indenture of mortgage the now existing lien or liens, and security of such first and second mortgage respectively, upon the property and franchises covered thereby; for the unpaid amount of such bonds, including the interest accruing subsequently to such extension, 171
and it shall be competent for the party of the second part hereto, as Trustee hereunder, to execute any instrument, or instruments, expressing its concurrence as Trustee in, or effectuating such preservation, keeping in force and renewing of such lien or liens as above authorized and provided as a lien prior and superior to the lien of this mortgage; provided always, and it is expressly understood, declared and provided, that nothing above contained is to authorize any inter- 172
ference with, or impairment in any respect of the before-mentioned prior and paramount lien upon the said railroad in Tennessee with its appurtenances and equipment, and the other property of said railroad company in that State, now held by said Adrian Iselin and Adrian Iselin, Junior, under transfer from the State of Tennessee, as aforesaid,

and proposed to be transferred in trust for the special security of the holders of said fourteen hundred bonds, numbers one to fourteen hundred inclusive, as aforesaid.

AND IT IS FURTHER PROVIDED, DECLARED AND AGREED by and between the parties hereto, as follows, that is to say:

First.—In case default shall at any time be made by the party of the first part in the due and punctual payment of any instalment of semi-annual interest at any time becoming due and payable upon any of the said bonds, within the aggregate amount of forty-seven hundred thousand dollars, issued under the security of this mortgage as aforesaid; and if any such interest shall remain in arrear and unpaid for sixty days after demand thereof, then and in such case if, and when thereafter the holders, at the time being, of one-third in amount of the then outstanding bonds, issued under and entitled to the benefit of the security of this mortgage, shall by instrument or instruments executed by them respectively, or their attorneys in fact thereunto duly authorized, and delivered to the party of the second part, or its successor or successors, as trustee hereunder, so elect, the principal sums secured by and payable upon all and singular the said bonds, within the aggregate amount of forty-seven hundred thousand dollars, issued under the security of this mortgage as aforesaid, with all arrears of interest thereon, shall become immediately due and payable, although the time for the payment of said principal, originally stipulated in said bonds shall not yet have arrived, anything in the said several bonds contained to the contrary notwithstanding.

Second.—Until the party of the first part shall have made some default in the payment of the prin-

cipal or interest secured by or payable upon the 177
said bonds hereby intended to be secured, or upon
some of such bonds, or some part of such principal
or interest, or in the performance of some other of
the covenants, stipulations and provisions on the
part of the party of the first part in this indenture
contained, the said party of the first part shall be
entitled to continue in the possession, use and en-
joyment of the said railroad and other mortgaged
premises, properties, rights, interests and franchises,
and in receipt of the income, rents and profits there- 178
of, and while the said party of the first part shall so
remain in possession, and there shall be no such
subsisting default in the payment of interest or
principal, or in the performance of the stipulations,
conditions and provisions on the part of the said
party of the first part in this indenture contained,
the said party of the second part, or its successor or
successors in the said trust, shall have full power
and authority, to be exercised in its or their own
discretion, and not otherwise, to release from the 179
lien and operation of these presents, in such manner
as it or they may deem proper, any portion of the
premises hereby mortgaged which may be appur-
tenant to the said mortgaged railroad, or any part
thereof, including the branches or which may have
been acquired or held for the uses or purposes
thereof, but which, in the judgment of the said
Trustee, shall be no longer requisite for use in con-
nection therewith, or which shall have been acquired
or held for stations, depots, shops or other build- 180
ings, or for supplying fuel, gravel or other material,
and which in the Trustee's judgment shall be no
longer requisite to be kept for such purpose, and
likewise any lands not occupied by the track, which
may become disused by reason of a change in the
location of any station-house, depot, shop or other
building connected with the said railroad, and like-

wise any land occupied by the tracks, and adjacent to such station-house, depot, shop, or other building, which the said party of the first part, its successors or assigns, may deem it expedient to disuse or abandon by reason of such change, and likewise any part of the original line of track or roadway, and of the depot grounds, buildings or accommodations connected therewith, which may have been thrown out of or ceased to form part of the railroad at the time of such release, by reason of straitening *or alteration of the line of the road or otherwise;* PROVIDED, ALWAYS, that the power of release given by this article is designed to be exercised, and shall be exercised only in case of the said railroad company's selling or contracting to sell the property so to be released, because of its being no longer required for the uses or purposes of said railroad, and requiring the same to be so released in order to give a perfect title to the purchaser or purchasers; AND PROVIDED FURTHER, that when such released premises shall have been thrown out of use, or ceased to be required, by reason of change of the line of the road, or change of depot grounds, buildings or other accommodations, the substitutes therefor shall be conveyed by appropriate deeds to the trustee, upon the trusts and for the uses and purposes of this indenture, before the giving of such release under the power contained in this article. AND PROVIDED FURTHER that as there are depot grounds in the city of Memphis of much greater extent and value than is required for the uses of said railroad, and which may be advantageously and properly sold and disposed of in aid of the general funds of the said railroad company and without procuring substitutes therefor, it is understood and provided that under the foregoing power the trustee may properly release such surplus depot grounds upon the same being sold, and without re-

ceiving any substitute therefor. And the said Trus- 185
tee shall likewise have full power to allow the said party of the first part, its successors or assigns, from time to time, to sell and dispose of such portion of the equipment, machinery and implements which shall be at any time held or acquired for the use of said railroad, as shall have become worn out or unfit for such use; PROVIDED, HOWEVER, that the same shall be adequately replaced by other equipment, machinery and implements, and all such other equipment, machinery and implements, which may 186
be acquired in substitution as aforesaid, shall, by virtue and force hereof, become and be immediately upon the acquisition of the same, subject to the lien and operation of these presents, without any new conveyance or transfer or other act or ceremony whatever, but such new conveyance and transfer shall be given to the trustee or trustees, if it or they shall require or request the same.

Third. The said party of the first part doth 187
hereby covenant, promise and agree, to and with the said party of the second part, and its successors in the trust hereby created, that while the said party of the first part shall remain in possession of the said railroad, it shall and will, from time to time, pay and discharge all taxes, assessments, and governmental charges, lawfully imposed upon the said railroad and branches, and other hereby mortgaged premises, or upon any part thereof, the lien of which might or could be held to be prior to the lien 188
of these presents, so that the priority of this mortgage may be duly preserved, and that the said party of the first part shall not and will not do or suffer any matter or thing whatsoever, whereby the lien of this Indenture of Mortgage might or could be impaired, until the said bonds hereby secured with all interest accrued thereon, shall be fully paid and satisfied.

189 *Fourth.* In case default shall be made in the payment of any semi-annual instalment of interest, which may have accrued upon the said bonds hereby secured, or upon any of them, when such interest shall become or be due and be demanded, and if such interest or any part thereof, shall remain unpaid and in arrear for the period of sixty days, after demand thereof made according to the tenor of the coupon representing the same, or according to the tenor of the bond ; or in case default shall be made in the
190 due observance and performance of the covenant for further assurance hereinafter contained ; or in case default shall be made by said railroad company in the payment of any taxes, assessments or other governmental charges, which may be lawfully levied or imposed upon the said mortgaged railroad, and premises, or any part thereof, and the lien whereof might or could be held prior to the lien of these presents, and if any such default as last above mentioned shall continue for the pe-
191 riod of sixty days after notification to the said Railroad Company, of the existence of such unpaid taxes, assessments and other governmental charges, and request to said Railroad Company to make payment thereof, shall have been made or given by the Trustee under this mortgage, or by the holders of bonds secured hereby to the aggregate amount of not less than three hundred thousand dollars ; or in case default shall be made in the payment of the principal of said bonds hereby secured, or any of
192 such bonds, when such principal shall be due and payable, then, and in any and every such case of default made, in any particular aforesaid, and provided such default be continued as aforesaid, where such continuance is above called for, the said party of the second part, or its successor or successors in the said trust, may, either personally or by agent or attorney, enter into and upon the said Rail-

road and other mortgaged premises, properties and 193
rights, and have, hold and possess the same, with the rights, privileges and franchises thereunto appertaining, and operate the said Railroad by such superintendents, managers, receivers, assistants, servants and agents, as the said Trustee shall deem proper, making from time to time all such repairs and replacements, and all such useful alterations, additions and improvements to the said Railroad, and other mortgaged property, as the said Trustee may deem expedient and judicious, and as the in- 194
come of the said mortgaged premises coming to the Trustees, hands shall be adequate to pay for. And it shall be lawful for the Trustee or Trustees, after entry and possession as above authorized, to collect and receive all fares, freights, issues, profits and income of the said Railroad and other mortgaged premises, and to deduct and retain and pay therefrom all the lawful expenses or charges of, or incident to, making such entry or obtaining possession of said premises, and the proper expenses and 195
charges of or incidental to the holding, operating and managing the said Railroad and premises and conducting the business thereof, including the expense of all such repairs, replacements, alterations, additions, and improvements as above authorized, and all payments which may be made or be due for taxes, assessments or other charges, or liens prior to the lien of these presents, upon the said Railroad and premises, or upon any part or parcel thereof, as well as just and reasonable compensation for the 196
Trustee's services in the premises, and for the services of such attorneys and counsel as may have been by it or them properly employed in respect thereof; and after making all such deductions and payments as aforesaid, the Trustee or Trustees shall apply the net residue of such fares, freights, issues, profits, and income remaining in its or their hands,

to the payment in the first place, of all overdue interest on the bonds hereby secured, or any of them, with the interest accrued on such amount of interest after default in its payment, in the order in which such interest shall have become due, rateably to the person holding the bonds, or coupons evidencing the right to such interest, and without discrimination or preference between them on account of the time of the actual issue of said bonds, and in the next place, to the payment of such interest accruing or becoming due, during such possession of the Trustee or Trustees, in the order in which such interest shall fall due, rateably, and without any preference of one bond or coupon over another, save the said preference accorded to earliest maturing coupons, and if, in any six months of the possession by the Trustee or Trustees, after payment of all matured interest on the said bonds, a surplus of net income arising as aforesaid shall remain in the hands of the Trustee or Trustees, it shall be lawful for the Trustee or Trustees to pay over such surplus to the said party of the first part, its successors or assigns, or as any Court of competent jurisdiction shall lawfully direct, and thereupon to deliver possession of said Railroad and other mortgaged premises to the party of the first part, to be thenceforward possessed by it, subject to the lien of this mortgage, and to the Trustee's right again to take possession in case of future default entitling possession to be taken as hereinbefore specified.

Fifth. In case default shall be made in the payment of any semi-annual instalment of interest, which may have accrued upon the said bonds within the aggregate amount of four million seven hundred thousand dollars hereby secured, or in the payment of such interest upon any of said bonds, when such

interest shall have become or be due, and be de- 201
manded, and if any such interest, or any part thereof, shall remain unpaid and in arrear for the period of sixty days after demand thereof made, according to the tenor of the coupon representing the same or according to the tenor of the bond, or in case default shall be made in the payment of the principal of the said bonds hereby secured, or of any of such bonds, when such principal shall be due and payable, it shall be lawful for the said party of the second part, or its successor or successors in trust 202
hereby created, either after entry made upon the mortgaged premises, as aforesaid, or without any such entry, either personally, or by attorney, or agent, duly constituted therefor by the said Trustee or Trustees, to sell and dispose of all and singular the said railroad and other premises, properties, rights and franchises, which shall then remain subject to the lien and operation of this Indenture of Mortgage, at public auction to the highest bidder, either in the City of New York, or in the City of 203
Memphis, in the State of Tennessee, as the said Trustee or Trustees may, in its or their discretion, designate, and at such time as it or they may appoint therefor; provided, however, and it is hereby declared and agreed, that preparatory to such auction sale, as aforesaid, the said Trustee or Trustees shall give public notice of the time and place, when and where the same is to be made, and of the property to be sold, by advertisement in two newspapers, published in each of the States of Tennessee, Ala- 204
bama, and Mississippi, and in two newspapers of good circulation, published in the City of New York, and that such advertisement shall be published in each of such newspapers, at least twice in each week, for the twelve successive weeks next previous to the day fixed for such sale, with the right, however, to the Trustee or Trustees, after such notice

shall have been so published, to adjourn the sale so advertised, from time to time in the discretion of the Trustee or Trustees, giving reasonable notices of such adjournment or adjournments, and after so adjourning, to make the sale at the time to which it may be finally adjourned. And it shall be lawful for the said Trustee or Trustees, and it or they are hereby expressly authorized and empowered, upon making any such auction sale of said mortgaged premises and property, rights and franchises as above authorized, to make and deliver to the purchaser or purchasers thereof, at such sale, upon his or their paying the purchase money therefor, a good and sufficient deed or deeds of conveyance in the law of the same, which auction sale and the deed or deeds thereof made as above authorized, it is hereby granted, declared and agreed, shall be good and valid in the law, and shall operate to vest in the grantee or grantees in such conveyances the said railroad and branches and other mortgaged premises, properties, rights and franchises, in fee simple and absolutely, and such deed or deeds shall operate to foreclose all equity of redemption of the said party of the first part, and its successors or assigns, and shall be a perpetual bar, both in law and equity, against the said party of the first part, its successors and assigns, and against any and all persons or corporations claiming or to claim such premises, properties, rights and franchises so sold and conveyed, or any part thereof, by, from, through or under the said party of the first part or its successors or assigns.

AND IT IS FURTHER PROVIDED, DECLARED AND AGREED, that from the proceeds of such sale made as aforesaid, the said Trustee or Trustees shall be entitled in the first place to deduct and retain or pay for all proper charges or expenses of or incident

to such advertisement, foreclosure and sale and con- 209
veyance, including attorneys' and counsels' fees, and any and all unreimbursed advances, expenses, charges and liabilities which may have been properly made or incurred by such Trustee or Trustees in maintaining or operating the said railroad, or in managing the business of the same while it shall have remained in the Trustees' possession, or in arranging for and completing the sale aforesaid; and also all payments which may have been made by the Trustee or Trustees for taxes or 210
assessments, and for charges or liens prior to the lien of this indenture, if any such there shall be, on the said railroad and premises so sold, or any part thereof, as well as the just and reasonable compensation for the services of such trustee or trustees in the premises, and the said trustee or trustees shall apply the residue of the proceeds of such sale, after the deductions and payments above authorized to be first made thereout, to the payment of the principal of the said bonds within 211
the amonnt of four millions seven hundred thousand dollars, by this mortgage secured, or intended so to be, or of such of said bonds as may at that time remain outstanding and unpaid, whether such principal shall or shall not, by the terms or conditions of said bond, have then fallen due and become presently payable, and likewise to the payment of the interest which shall have accrued up to that time upon the principal of the said bonds hereby secured, and which shall remain unpaid and prop- 212
erly payable with any interest accrued on such interests after default, without discrimination or preference as between principal and interest, but rateably according to the aggregate amount of such unpaid principal and accrued and unpaid interest, which payments shall be made to the persons holding respectively the bonds and coupons evi-

dencing the right to such principal and interests, without any discrimination or preference between them on account of the time of the actual issuing of the bonds or of the time of maturing of the interest or principal, and always subject to and in accordance with the special provisions hereinbefore contained relating to the said fourteen hundred of such bonds, numbers one to fourteen hundred inclusive, and it being understood and hereby declared and agreed that upon any sale of said rail-
road and other mortgaged premises which may be made as aforesaid, or upon any sale thereof made under or by virtue of the judgment or decree of any Court of competent jurisdiction rendered in any suit or proceeding for the enforcement or foreclosure of the lien created by this Indenture of Mortgage, the principal of all the then outstanding bonds secured by these presents shall become and be immediately due and payable. And it is further declared and agreed that the receipt of the trustee
or trustees who shall make the sale hereinbefore authorized shall be a sufficient discharge to the purchaser or purchasers at such sale for his or their heirs or assignee or personal representatives, shall not, after paying such purchase money and receiving such trustee's receipt therefor be obliged to see to the application of such purchase money upon or for the trusts or purposes of these presents, or be in anywise answerable for any loss, misapplication or non-application of such purchase money by the
trustee or trustees.

And the said party of the first part doth hereby further covenant that it will, if and when thereunto requested, make, execute and deliver such deeds or other instruments as shall be reasonably advised by counsel to confirm and assure such title and ownership as aforesaid to such purchaser or purchasers at such sale made as above authorized so as fully to effectuate said sale.

And the said party of the first part for itself, its successors and assigns, hereby agrees to waive, and doth hereby absolutely and irrevocably waive and relinquish the benefit or advantage of any and all valuation, stay, or appraisement, extension or redemption law or laws, now existing or which may hereafter be passed by either of the States of Tennessee, Alabama and Mississippi, which but for this provision, agreement and waiver might be applicable to the sale hereinbefore authorized to be made by the trustee or trustees of the said railroad and other mortgaged premises, or to any judicial sale which may be made of said mortgaged railroad and premises, or any part thereof, under and in virtue of the judgment or decree of any competent Court in a suit instituted for the foreclosure of this mortgage or for enforcement of the lien by this indenture created, and the said party of the first part for itself, its successors or assigns, agrees to waive and doth hereby irrevocably waive any and all right of redemption which it might or could otherwise have or be entitled to, under any present or future law of either of the three States of Tennessee, Alabama and Mississippi, upon or after or in respect of any sale of the said hereby mortgaged premises, properties, rights and franchises, or any part thereof, which may be made either by the Trustee or Trustees under the power hereinbefore contained, or as a judicial sale under order or decree of a court in a suit for foreclosure of this mortgage or enforcement of its lien as aforesaid, and the said party of the first part hereby covenants that it will not in any manner set up or seek to take the benefit or advantage of any such present or future valuation, stay, appraisement, extension or redemption law, to prevent or hinder or delay the absolute and irredeemable sale of said mortgaged premises, properties, rights and fran-

chises, as hereinbefore authorized to be made by the Trustees, or as might, but for such law, be directed or decreed by a court of competent jurisdiction.

AND IT IS HEREBY FURTHER PROVIDED, DECLARED AND AGREED, that in case of such auction sale as hereinbefore authorized being made by the party of the second part, or its successor or successors in the said trust, or in case of any judicial sale being made of the said railroad and other premises, properties, rights, and franchises, hereby mortgaged or any part thereof, in enforcement of the mortgage lien hereby created, the purchaser or purchasers at such sale shall be entitled, in making settlement for and payment of the purchase money bidden at such sale, to turn in and use towards the payment of such purchase money, any of the bonds or coupons held by such purchaser or purchasers, to or towards the payment whereof the net proceeds of such sale shall be legally applicable, reckoning such bonds or coupons for such purpose, at such sum as shall be payable out of the net proceeds of such sale to such purchaser or purchasers, as holder or holders of such bonds or coupons, for his or their just share or proportion, in that character, of such net proceeds of sale upon due apportionment of and accounting concerning such net proceeds, due receipts and acknowledgments being thereupon given by the holders of such bonds or coupons for the amount thus realized thereon, by means of turning in and using the same as aforesaid, and said bonds or coupons being either delivered up to the person or persons making the sale, and entitled to receive payment of the purchase money, or due endorsement being made thereon of the amount so realized on account thereof.

Sixth. Whenever there shall have occurred such

continued default, in the payment of either interest 225
upon or principal of the bonds, secured by this Indenture of Mortgage, or upon, or of any of such bonds as in virtue of the preceding provisions of this Indenture shall entitle the Trustee or Trustees to proceed to advertise and sell the mortgaged premises as aforesaid, it shall be obligatory upon the said Trustees, upon being thereunto requested by the holders of so many as one-third in amount of the then outstanding bonds secured by this Indenture, by an instrument or instruments in writing to such 226
effect, executed by such bondholders or their duly authorized attorneys in fact, to proceed either to assert the power of sale hereinbefore conferred upon the Trustee, or to institute and carry on, with the advice of competent attorneys and counsel, legal proceedings in a court or courts of competent jurisdiction, for the enforcement and protection of the rights of the Trustees and the bondholders in the premises, and for foreclosure of this mortgage, enforcement of the lien thereof, and a judicial sale of said 227
mortgaged premises or properties, rights and franchises, and immunities, it being hereby expressly declared, granted, agreed and provided, that the right to proceed by suit or suits, or other appropriate legal proceedings in a court or courts of competent jurisdiction shall exist, and is and shall be in no wise prejudiced by the power of entry, or by the power of sale, or any of the other provisions hereinbefore contained, and it shall in the event of such request by bondholders as aforesaid, be in the 228
discretion of the Trustee or Trustees, under the advice of competent counsel, to adopt and pursue such one of the two courses above mentioned as to such Trustee or Trustees shall seem most expedient; PROVIDED, HOWEVER, and it is a condition of the obligations of the Trustee or Trustees to adopt either course, or to take any steps for the fore-

closure or enforcement of this mortgage or any steps for entry into possession of the mortgaged premises under the power in that behalf hereinbefore contained, that the Trustee or Trustees before actually taking any such steps or proceedings of any kind, shall have the right to require the bondholders calling upon it or them so to do, to furnish to it or them reasonable indemnity for, and provision for the payment, as and when required of the costs, charges and expenses of, or incident to such steps or proceedings.

Seventh. The trustee under this indenture, or its successor or successors, may at any time be removed from the trust, by instrument in writing under the hands and seals of the holders of a majority in amount of the then outstanding bonds secured hereby, or their attorneys in fact thereunto authorized.

AND IT IS FURTHER DECLARED, PROVIDED AND AGREED, that in case a vacancy shall at any time exist in a trusteeship hereunder, by reason of removal, death or mental incapacity of the trustee or trustees for the time being, or either of them, or of the resignation of any such trustee accepted, in writing, by a majority in interest of the bondholders or by a court of competent jurisdiction, or of a vacancy in such trusteeship otherwise lawfully occurring and existing, a majority in amount of the holders of the then outstanding bonds, issued under and secured by this indenture of mortgage, shall have the right and power, by instrument in writing under hand and seal, to appoint a new trustee or trustees, to fill such vacancy; and, in case the vacancy shall be caused by the party of the second part, or any corporation appointed in its place ceasing to be trustee, such vacancy may be so filled by the bondholders by the appointment, as trustee, of

another corporation having lawful power to execute such trust, or of one or more individual trustees; and until the appointment of a trustee or trustees, to fill any vacancy, shall have been made by the majority in amount of the said bondholders under the power in that behalf above contained, the Board of Directors, for the time being, of the party of the first part may appoint a new trustee or trustees to fill such vacancy for the time being; and in case of any vacancy being filled by such appointment by the Board of Directors, it shall be competent for any court of equitable powers, having jurisdiction in the premises, upon the application of any of the bondholders holding not less than five hundred thousand dollars in amount of such bonds, to annul such appointment, and appoint a trustee or trustees in place of the trustee or trustees so appointed by the directors, to hold the trust for the like term as he or they would have held the same under the appointment of the said directors, but no longer, and if the directors shall omit to fill the vacancy it may be filled by a court in the manner and with the effect last above provided and upon the like tenure. 233 234 235

And in case of any vacancy occurring and not being filled by a majority in amount of the bondholders, under the preceding provisions in that behalf, it shall be the duty of the president of the said railroad company to call a meeting, on a notice of at least three weeks, published once a week, for three successive weeks, in two newspapers, of good circulation, published in the City of New York, of the bondholders, to be held in the City of New York, to appoint a trustee or trustees to fill the vacancies so existing, or which shall have existed; but, nevertheless, such vacancy may be filled without waiting for and irrespective of any such meeting, by instrument or concurrent instruments, 236

under hand and seal of a majority in interest of such bondholders, and any appointment of a trustee or trustees to fill such vacancy existing or which shall have existed, whether made at such meeting, called as aforesaid, or otherwise, provided it be under the hands and seals of a majority in amount of the holders of the then outstanding bonds hereby secured, or their attorneys in fact thereunto authorized, but not otherwise, shall be valid and effectual, and shall supersede any previous appointment of a trustee, to fill such vacancy, which may have been made by the board of directors of the said company, or by a Court under any of the preceding provisions hereof.

AND IT IS HEREBY PROVIDED, DECLARED AND AGREED that the due appointment of a trustee or trustees, in any of the modes herein provided, shall be effectual to vest in such truestee or trustees the appropriate estate, rights, powers and duties as herein provided in that behalf, without any new deed or conveyance; but, nevertheless, the said railroad company hereby covenants, in any and every such case, to make and execute, upon request, any such deeds, conveyances or assurances as may be appropriate for more fully and certainly vesting in and confirming to such new trustee such estate, rights, powers and duties, and in every case of resignation of a trustee, the resigning trustee shall, if requested, make and execute such deeds, conveyances or assurances to his successor.

AND IT IS HEREBY FURTHER PROVIDED, DECLARED AND AGREED that whenever, and as often as any occasion shall arise in which the action of a majority in amount of the said bondholders, in pursuance of any power or provision herein contained, shall be called for or be appropriate, a meeting or meetings,

from time to time, of such bondholders, to be held 241
in the City of New York, may be called by the trustee under this indenture, or by such bondholders holding bonds to an aggregate amount of five hundred thousand dollars, upon notice of advertisement, published for not less than three weeks successively, at least once in each week, in two newspapers published in the City of New York, and that the expenses of calling, advertising and holding any such meeting, and of any adjournment thereof, shall be a claim against and charge upon the trust 242
funds or property held in trust hereinunder, and shall be paid by the trustee out of any trust funds in its or their hands.

Eighth. The trustee or trustees hereunder shall be entitled to receive reasonable compensation for all services performed by it or them in or about the execution of the trusts hereby created. And it is hereby further provided, declared and agreed that in case of the 243
trustee or trustees hereunder entering upon and taking possession of the said railroad and other mortgaged premises or property in consequence of default made by said railroad company, under or in pursuance of the power and authority in that behalf hereinbefore conferred upon the trustee, it shall be lawful and competent for such trustee or trustees to employ an agent or agents for the performance of any such duties, acts and things in and about taking and maintaining such possession, and using, 244
operating and managing the said railroad, and collecting the income, earnings and profits thereof, and making repairs and improvements as above authorized, as such trustee or trustees may deem fit, and for the performance of any other acts in and about such possession and management, the performance whereof can be properly delegated to an agent; and

245 that such trustee or trustees, provided it or they shall have exercised reasonable prudence and care in the selection and employment of such agent or agents for any such purposes, shall not be responsible for losses or damages in the premises caused by the act, neglect or default of such agent or agents. But this provision is not intended, and shall not be construed, so as to exempt the trustee or trustees, in case of sale being made of the said mortgaged premises, from due responsibility to the bondhold-
246 ers hereby secured for the due application of the proceeds of such sale received, either by the trustee or trustees or by any agent or agents whom it or they may see fit to employ to receive such proceeds of sale.

Ninth. And this indenture further witnesseth that the said party of the first part, for the considerations aforesaid, has covenanted, promised and agreed, and does hereby covenant, promise and agree to and
247 with the said party of the second part, and its successors in the trust hereby created, that the said party of the first part and its successors shall and will well and truly pay or cause to be paid unto the respective holders of the said bonds for four million seven hundred thousand dollars, issued under and secured by this mortgage, the principal thereof and the interest thereon, as the same shall from time to time become payable, according to the tenor of said bonds and the coupons accompanying
248 the same respectively.

And the said party of the first part, for the consideration aforesaid, doth hereby covenant and agree to and with the said party of the second part and its suceessor or successors, as Trustee, and likewise to and with the holders, from time to time, of the several bonds issued under and secured by this Indenture, that

the said party of the first part, its successors and 249
assigns, shall and will, from time to time, and at all times hereafter, upon reasonable request, make, do, execute, acknowledge and deliver all such further acts, deeds, conveyances and assurances in the law, for the better and more effectually assuring, conveying and confirming unto the said Trustee and its successors or successor in the trust hereby created upon the trusts and for the uses and purposes herein expressed or intended, all and singular the railroad and equipment, premises, properties, rights 250
and franchises hereby mortgaged or conveyed in trust, or agreed, or purporting or intended so to be, whether now owned or possessed by or vested in said party of the first part, or subsequently acquired by or vested in it, as by such Trustee or Trustees or bondholders, under the advice of counsel, shall be reasonably advised, devised or required.

And whereas, it is intended that the said party 251
of the second part hereto shall be the Trustee to whom in trust for the security and benefit of the holders of the said fourteen hundred bonds, numbers one to fourteen hundred, inclusive, shall be assigned by Adrian Iselin and Adrian Iselin, Junior, the above-mentioned indebtedness of the said Railroad Company originally existing in favor of the State of Tennessee, and the State's lien therefor assigned to said Adrian Iselin and Adrian Iselin, Junior, as aforesaid, it is hereby declared and 252
agreed that such circumstance of the said party of the second part being so made Trustee of such special trust created and special and additional security so given for the special, separate and exclusive benefit of the holders of said fourteen hundred bonds, numbers one to fourteen hundred, inclusive, shall not be deemed in any wise inconsistent

253 with the Trusteeship or position of the said party of the second part as Trustee hereunder for all said bondholders; and such Trusteeship of the party of the second part hereunder shall in no wise detract from, affect or impair the special and exclusive rights and securities of the holders of said fourteen hundred bonds, held by them through the Trusteeship of the party of the second part hereto, for their separate use and benefit under such trust created by said Adrian Iselin and Adrian Iselin,
254 Junior.

And the said party of the second part doth hereby accept the trusts hereby created. And the said party of the second part, as Trustee hereunder, and its successors, are hereby released from executing the bond required from Trustees by the laws of Tennessee, Alabama or Mississippi, respectively, and from giving any bond or security as Trustee or Trustees under this indenture.

255 IN WITNESS WHEREOF the said party of the first part, in pursuance of a resolution of its Board of Directors, hath hereto affixed its corporate seal, and caused the same to be attested by its President and Secretary; and the said party of the second part, in pursuance of authority of its Board of Directors, hath hereto affixed its corporate seal, and caused the same to be attested by its President and Secretary, the day and year first above written.

256 THE MEMPHIS AND CHARLESTON RAILROAD CO.

BY R. T. WILSON, *President.*

[Seal.]

THE MEMPHIS AND CHARLESTON RAILROAD CO.

BY S. R. CRUSE, *Secretary.*

FARMERS LOAN AND TRUST CO.

BY R. G. ROLSTON, *President.*

[Seal.]

STATE OF NEW YORK, } ss: 257
City and County of New York, }

BE IT REMEMBERED, that on this 20th day of August, A. D. 1877, before me, CHARLES NETTLETON, a Commissioner of Deeds of the State of Tennessee in and for the State of New York, residing in said City of New York, personally appeared RICHARD T. WILSON, to me personally known and known to me to be the President of the Memphis and Charleston Railroad Company, the grantor described in and who executed the foregoing instrument, and being by me duly sworn, did personally depose and say: That he was such President of the said Memphis and Charleston Railroad Company, that the seal affixed to the foregoing instrument, purporting to be the corporate seal of said Company is the corporate seal of said Company, and was thereunto affixed by said authority of the said corporation, and that he subscribed his name thereto as such President by like authority—and the said RICHARD T. WILSON, President of said Memphis and Charleston Railroad Company, the bargainor in the foregoing instrument, with whom I am personally acquainted, also acknowledged that he executed the foregoing instrument for the purposes therein contained as his own act and deed as such President and the act and deed of said Company. And on the same day before me also personally appeared ROSEWELL G. ROLSTON, to me personally known and known to me to be the President of the Farmers' Loan and Trust Company of New York, and being by me duly sworn, did depose and say: That he was the President of said Farmers' Loan and Trust Company, New York; that the seal affixed to the foregoing instrument, purporting to be the corporate seal of that Company, is the corporate seal of that Company, and was thereunto affixed by said authority of said corporation, and that he sub- 258 259 260

261 scribed his name thereto as such President by like authority. And the said ROSEWELL G. ROLSTON, the President of the said Farmers' Loan and Trust Company of New York, Trustee in the foregoing instrument named, with whom I am personally acquainted, also acknowledged that he had executed the foregoing instrument for the purposes therein contained as his own act and deed as such President, and the act and deed of said Company.

262 IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 20th day of August, A. D. 1877.

[L.S.] CHARLES NETTLETON,
Commissioner for Tennessee in New York,
117 Broadway, New York City.

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263 STATE OF NEW YORY, } ss:
City and County of New York, }

BE IT REMEMBERED, that on this 20th day of August, A. D. 1877, before me, CHARLES NETTLETON, a Commissioner of Deeds of the State of Mississippi, in and for the State of New York, residing in said City of New York, personally appeared RICHARD T. WILSON, to me personally known, and known to me to be the President of the Memphis and Charleston Railroad Company, the grantor de-
264 scribed in, and who executed the foregoing instrument; and being by me duly sworn, did personally depose and say: That he was such President of the said Memphis and Charleston Railroad Company; that the seal affixed to the foregoing instrument, purporting to be the corporate seal of said Company, is such corporate seal, and was thereunto affixed by said authority of said corporation, and that he sub-

scribed his name thereto as such President by like 265
authority; and the said RICHARD T. WILSON also acknowledged that he signed, sealed and delivered the foregoing instrument as his act and deed as such President, and the act and deed of said Company. And on the same day before me also personally appeared ROSEWELL G. ROLSTON, to me personally known, and known to me to be the President of the Farmers' Loan and Trust Company of New York, and being by me duly sworn, did personally depose and say: That he was the President 266
of the said Farmers' Loan and Trust Company of New York; that the seal affixed to the foregoing instrument, purporting to be the corporate seal of that Company, is the corporate seal of that Company, and was thereto affixed by said authority of said corporation, and that he subscribed his name thereto as such president by like authority; and the said Rosewell G. Rolston also acknowledged that he signed, sealed and delivered the foregoing instrument as such president as the act and 267
deed of said company, and his own act and deed as such president.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal this 20th day of August, A.D. 1877.

[L.S.] CHARLES NETTLETON,
Commissioner for Mississippi in New York,
117 Broadway, New York City.

268

STATE OF NEW YORK, }
City and County of New York. } ss.

BE IT REMEMBERED, that on the 20th day of August, A.D. 1877, before me, Charles Nettleton, a Commissioner of Deeds of the State of Alabama in and for the State of New York, residing in said

City of New York, personally appeared RICHARD T. WILSON, to me personally known, and known to me to be the President of the Memphis and Charleston Railroad Company, the grantor described in, and who executed the foregoing instrument, and, being by me duly sworn, did personally depose and say: That he was such President of the said Memphis and Charleston Railroad Company, that the seal affixed to the foregoing instrument, purporting to be the corporate seal of said company, is the corporate seal of said company, and was thereunto affixed by said authority of the said corporation, and that he subscribed his name thereto as such president by like authority; and the said RICHARD T. WILSON, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he executed the same voluntarily, on the day the same bears date, as his act and deed as such president, and the act and deed of said company. And on the same day before me also personally appeared ROSEWELL G. ROLSTON, to me personally known, and known to me to be the President of the Farmers Loan and Trust Company of New York, the trustee described in, and who executed the foregoing instrument, and, being by me duly sworn, did personally depose and say that he was such President of the said Farmers Loan and Trust Company; that the seal affixed to the foregoing instrument, purporting to be the corporate seal of said company, is the corporate seal of said company, and was thereunto affixed by said authority of the said corporation, and that he subscribed his name thereto as such president by like authority. And the said Rosewell G. Rolston, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day, that being informed of the contents of

said instrument, he executed the same voluntarily 273
on the day the same bears date, as his act and deed as such president, and the act and deed of said company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 20th day of August, A.D. 1877.

[L.S.] CHARLES NETTLETON,
Commissioner for Alabama in New York.
117 Broadway, New York City. 274

RESPONDENT'S EXHIBIT No. 2.

W. H. D. L., *Sp'l Ex'r.*

AN INDENTURE, made this twenty-first day of August, eighteen hundred and seventy-seven, between Adrian Iselin and Adrian Iselin, Junior, composing the firm of A. Iselin & Company, of the City 275
of New York, parties of the first part; The Farmers' Loan and Trust Company, a corporation created by the laws of the City of New York, party of the second part, and The Memphis and Charleston Railroad Company, a corporation created and organized by and under the laws of the respective States of Tennessee and Alabama and Mississippi, party of the third part.

WHEREAS, the said The Memphis and Charles- 276
ton Railroad Company heretofore became indebted to the State of Tennessee for and in respect of the bonds of that State, loaned or advanced or delivered to or in aid of the said Railroad Company, under and in pursuance of the General Internal Improvement laws and other laws of that State, and for the amount of which indebtedness the State of Tennes-

277 see held a statutory first lien in the nature of a mortgage on all that part of the railroad, as well branch as main line of the said The Memphis and Charleston Railroad Company, which is situated in the said State of Tennessee, with the lands and premises thereunto appertaining, and the rolling stock or equipment and other appurtenances thereof, and the other property of said Railroad Company, situated in the said State of Tennessee.

278 AND WHEREAS, under and in pursuance of and in accordance with the sixth and seventh sections of the Act of the Legislature of the State of Tennessee, entitled "An Act to liquidate the State debt contracted in aid of railroad companies in the State of Tennessee," passed February 25th, 1869, and the other laws of said State of Tennessee in that behalf, the said the Memphis and Charleston Railroad Company and the Board of Directors thereof heretofore gave their approbation and consent in writing, that
279 the said Adrian Iselin and Adrian Iselin, Junior, might pay, so far as the State of Tennessee was concerned, the amount of the said indebtedness of the said Railroad Company to said State of Tennessee, and coupons of such bonds at par, as provided for by the laws of the said State of Tennessee in that behalf, and that they might thereby and thereupon become substituted and entitled to all the liens against said Company for the payment of said debt, which the said State of Tennessee had by law, as by
280 the sixth section of the Act aforesaid is provided; and further, the said Adrian Iselin and Adrian Iselin, Junior, should thereupon, as provided for by seventh section of the Act aforesaid, be entitled to have and to hold all the lien or liens which the said State of Tennessee had upon said railroad or its property, and should have the same right to enforce the same which the said State of Tennessee

had, the object and intent being thereby declared to 281
be to place the said Adrian Iselin and Adrian Iselin,
Junior, so paying the amount of the debt of the
said Railroad Company to the State in the same
position and with the same rights which the said
State of Tennessee had previous to and before the
said payment, and with full power to enforce the
same, and on or about the twenty-fifth day of July,
eighteen hundred and seventy-seven, certified copies
of the resolutions of the Board of Directors of the
said Railroad Company under its corporate seal, 282
were duly filed with the Treasurer of said State of
Tennessee, copies of which resolutions and of which
instrument so executed by said railroad company un-
der and in pursuance thereof, under said Company's
corporate seal, are as follows, that is to say: In the
copy of the instrument hereinafter executed by said
Company under its seals, the signatures and seals
do not appear, but the same were duly affixed there-
to, the instrument so executed being in the form
and to the effect set forth in the said resolution 283
authorizing the same.

I, Marshall T. Polk, Treasurer of the State of Tennessee, do hereby certify that Adrian Iselin and Adrian Iselin, Junior, composing the firm of A. Iselin & Company, have this day, in pursuance of the sixth and seventh sections of the Act of the Legislature of Tennessee, entitled "An Act to liquidate the State debt contracted in aid of railroad companies in the State of Tennessee," passed Feb- 284
ruary 25th, 1869, filed in my office certified copies of certain resolutions of the Board of Directors of the Memphis and Charleston Railroad Company, and a certain written consent and agreement of said Memphis and Charleston Railroad Company under its corporate seal, duplicate copies of which resolutions and consent and agreement are hereunto annexed.

285 Given under my hand and official seal this twenty-fifth day of July, eighteen hundred and seventy-seven.

MARSHALL T. POLK, *Treasurer.*

At a meeting of the Board of Directors of the Memphis and Charleston Railroad Company, held in the City of Memphis, on the thirty-first day of May, eighteen hundred and seventy-seven,

286 Present—R. T. Wilson, President; C. M. McGhee, Vice-President; Messrs. J. R. Mosby, Jerome Hill, W. S. Hastie, Napoleon Hill, W. W. Garth, J. D. Rather and George P. Bierne. Upon motion of Mr. Napoleon Hill, duly seconded, it was resolved, all the members of the Board present voting in favor thereof, except George P. Bierne, as stated in the three resolutions next following, viz. :

287 *Resolved*, That this board hereby gives its consent and approbation, and that of the company, that Adrian Iselin and Adrian Iselin, Junior, composing the firm of A. Iselin & Company, of the City of New York, may, so far as the State of Tennessee is concerned, pay this company's indebtedness to the State of Tennessee for or in respect of the Tennessee State bonds heretofore loaned or delivered to or in aid of this company, and for which the State has a lien in Tennessee State bonds or coupons thereof, as
288 provided for by the Act of the Legislature of Tennessee in that behalf, approved February 25th, 1869, and the Acts amendatory thereof, or supplementary thereto, and that by such payment said A. Iselin & Company shall acquire and be entitled to the rights, liens and securities in that behalf, provided for by the sixth and seventh sections respectively of the said Act of February 25th, 1869.

Resolved, That the President and Secretary of 289
this company be and are hereby authorized and directed to execute, under this company's corporate seal, and with their signatures as such President and Secretary, an instrument substantially of the form and effect following, in duplicate, and deliver the same to said A. Iselin & Co., one copy thereof being intended to be filed with the State Treasurer of Tennessee, as follows, that is to say:

KNOW ALL MEN BY THESE PRESENTS, that where- 290
as the Memphis and Charleston Railroad Company is indebted to the State of Tennessee, for or in respect of the amount of the bonds of the said State which were loaned or advanced or delivered to or in aid of said railroad company under the general internal improvement laws of said State, or other laws of said State, in that behalf, and for which indebtedness of said railroad company the said State holds a lien upon said company's railroad in the State of Tennessee, and other property of said company, 291
as provided by law, which indebtedness is for the amount of bonds of said State of Tennessee, originally loaned, issued or delivered to or in aid of said railroad company, and for the amount of certain Tennessee State bonds issued to fund or provide for certain interest upon those bonds; which during a certain period the said railroad coupons failed to provide for; the aggregate amount of principal of such bonds, 292
including those so issued for funding interest, after deducting and giving credit for the amount heretofore paid on account by the railroad company to the sinking fund, being sixteen hundred and seventy-one thousand seven hundred dollars, be the same more or less, upon which principal there is due from the Railroad Company to the State about fif-

293 teen thousand dollars for interest due on the first day of January last; and interest has accrued and is accruing upon the whole amount of said principal from the first day of January last, and such interest for six months will fall due on the first day of July next.

NOW, THIS INSTRUMENT which is executed by the said the Memphis and Charleston Railroad Company, under its corporate seal, in pursuance of a
294 resolution of the Board of Directors of said railroad company specially authorizing the same; duly passed at a meeting of said Board duly held on the thirty-first day of May instant,

WITNESSETH that the said the Memphis and Charleston Railroad Company, and the Board of Directors of said company, respectively have given and do give its and their consent and approbation, under and in pursuance of the Act of the Legisla-
295 ture of the State of Tennessee, entitled "An Act to Liquidate the State Debt contracted in aid of Railroad Companies in the State of Tennessee," passed the twenty-fifth day of February, eighteen hundred and sixty-nine, and the Acts of such Legislature in amendment thereof or supplementary thereto, that Adrian Iselin and Adrian Iselin, Junior, composing the firm of A. Iselin & Co., of the City of New York, may, so far as the State of Tennessee is concerned, pay the indebtedness of the Memphis
296 and Charleston Railroad Company to the State of Tennessee for or in respect of the amount of bonds of said State which were heretofore loaned or advanced or delivered to or in aid of said railroad company, which indebtedness is that hereinbefore referred to; and that such payment of such indebtness may be so made by said Adrian Iselin and Adrian Iselin, Junior, in the bonds of the State of

Tennesssee, or coupons of such bonds, at par, as 297
allowed by the laws of said State in that behalf;
and that said Adrian Iselin and Adrian Iselin,
Junior, may and shall, upon so paying such indebt-
edness, to be substituted and entitled to all the liens
against said railroad company, and against its
property, for the payment of such indebtness that
the State of Tennessee had or has by law; and that
said Adrian Iselin and Adrian Iselin, Junior, upon
so paying such indebtedness, may receive from the
Governor and Secretary of State of Tennessee such 298
certificate in that behalf as is provided for by the
sixth section of the above mentioned Legislative
Act of the twenty-fifth day of February, eighteen
hundred and sixty-nine. And under and in pursu-
ance of the seventh section of the Act last above
mentioned, the said the Memphis and Charleston
Railroad Company, and the Board of Directors of
said company, do hereby further respectively
assent and agree that said Adrian Iselin
and Adrian Iselin, Junior, upon so paying 299
the aforesaid indebtedness of the Memphis
and Charleston Railroad Company, to the State
of Tennessee, so far as said State is concerned, in
the bonds or coupons of said State as aforesaid,
may and shall, upon filing with the Treasurer of the
State of Tennessee this instrument, executed under
the corporate seal of said company, be entitled to
have and hold all the lien or liens which the State
of Tennessee had or has upon the railroad of said
Memphis and Charleston Railroad Company, or its 300
property, and shall have the same right to enforce
the same which the State of Tennessee had, the ob-
ject and intent being (and being or hereby declared),
in accordance with the seventh section of the said
Act of the twenty-fifth day of February, eighteen
hundred and sixty-nine, to place the said Adrian
Iselin and Adrian Iselin, Junior, so paying such in-

debtedness, with the consent of said railroad company, in the same position and with the same rights which the State of Tennessee had previous to and before the said payment, and with full power to enforce the same.

IN WITNESS WHEREOF the said the Memphis and Charleston Railroad Company, in pursuance of a resolution of its Board of Directors as aforesaid, hath hereunto affixed its corporate seal, and caused these presents to be executed on its behalf by its President and Secretary, the thirty-first day of May, eighteen hundred and seventy-seven. And this Board hereby agrees and gives its consent and approbation to everything stated or contained in the instrument above directed to be executed and delivered to said A. Iselin & Co.

Resolved, That the secretary be directed to furnish to A. Iselin & Co., in duplicate, copies certified by him of these resolutions.

I HEREBY CERTIFY that the foregoing is a true copy from the minutes of a meeting of the Board of Directors of the Memphis and Charleston Railroad Company, held in the city of Memphis, Tennessee, on the thirty-first day of May, eighteen hundred and seventy.

S. R. CRUSE,
Secretary and Treasurer of the Memphis and Charleston Railroad Co.

(Seal.)

KNOW ALL MEN BY THESE PRESENTS, that whereas the Memphis and Charleston Railroad Company is indebted to the State of Tennessee, for or in respect to the amount of the bonds of the said State which were loaned or advanced or delivered to or in aid of said railroad company under the General

Internal Improvement Laws of said State, or other 305
laws of said State, in that behalf, and for which indebtedness of said railroad company the said State holds a lien upon said company's railroad in the State of Tennessee, and other property of said company, as provided by law, which indebtedness is for the amount of bonds of said State of Tennessee, originally loaned, issued or delivered in aid of said railroad company and for the amount of certain Tennessee State bonds issued to fund or provide for certain interest upon those bonds, which during a 306
certain period the said railroad company failed to provide for; the aggregate amount of principal of such bonds, including those so issued for funding interest, after deducting and given credit for the amount heretofore paid on account by the railroad company to the sinking fund, being sixteen hundred and seventy one thousand seven hundred dollars, be the same more or less, upon which principal there is due from the railroad company to the State about fifteen thousand dollars for interest due 307
on the first day of January last; and interest has accrued and is accruing upon the whole amount of said principal from the first day of January last, and such interest for six months will fall due on the first day of July next.

Now, THIS INSTRUMENT, which is executed by the said The Memphis and Charleston Railroad Company under its corporate seal; in pursuance of a resolution of the Board of Directors of said railroad 308
company, specially authorizing the same, duly passed at a meeting of the said board, duly held on the 31st day of May, instant.

WITNESSETH, That the said The Memphis and Charleston Railroad Company, and the Board of Directors of said company respectively, have given,

and do give its and their consent and approbation, under and in pursuance of the Act of the Legislature of the State of Tennessee, entitled "An Act to liquidate the State debt contracted in aid of railroad companies in the State of Tennessee," passed February 25th, 1869, and the Acts of such Legislature in amendment thereof, or supplementary thereto, that Adrian Iselin and Adrian Iselin, Junior, composing the firm of A. Iselin & Compay, of the the city of New York, may, so far as the State of Tennessee is concerned, pay the indebtedness of the Memphis and Charleston Railroad Company to the State of Tennessee for or in respect of the amount of bonds of said State, which were heretofore loaned or advanced or delivered to or in aid of said railroad company, which indebtedness is that herein before referred to, and that such payment of said indebtedness may be so made by said Adrian Iselin and Adrian Iselin, Junior, in the bonds of the State of Tennessee or coupons of such bonds at par, as allowed by the laws of said State in that behalf, and that said Adrian Iselin and Adrian Iselin, Junior, may and shall, and upon so paying such indebtedness be substituted and entitled to all the liens against said railroad company and against its property for the payment of such indebtedness that the State of Tennessee had or has by law; and that said Adrian Iselin and Adrian Iselin, Junior, upon so paying such indebtedness may receive from the Governor and Secretary of State of Tennessee such certificate in that behalf as is provided for by the sixth section of the above-mentioned Legislative Act of February 25th, 1869.

And under and in pursuance of the seventh section of the Act last above-mentioned the said The Memphis and Charleston Railroad Company, and the Board of Directors of said Company, do hereby further respectively assent and agree that

said Adrian Iselin and Adrian Iselin, Junior, upon 313
so paying the aforesaid indebtedness of the Memphis and Charleston Railroad Company to the State of Tennessee, so far as the said State is concerned, in the bonds or coupons of said State, as aforesaid, may and shall, upon filing with the Treasurer of the State of Tennessee this instrument, executed under the corporate seal of said Company, be entitled to have and hold all the lien or liens which the State of Tennessee had or has upon the Railroad of said Memphis and Charleston Railroad Company or its 314
p operty, and shall have the same right to enforce the same which the State of Tennessee had, the object and intent being (and being so hereby declared) in accordance with the seventh section of the said Act of February 25th, 1869, to place said Adrian Iselin and Adrian Iselin, Junior, so paying such indebtedness, with the consent of said Railroad Company, in the same position and with the same rights which the State of Tennessee had previous to and
before the said payment, and with full power to en- 315
force the same.

IN WITNESS WHEREOF, the said The Memphis and Charleston Railroad Company, in pursuance of a resolution of its Board of Directors, as aforesaid, have hereunto affixed its corporate seal and caused these presents to be executed on its behalf by its President and Secretary, the thirty-first day of May, eighteen hundred and seventy-seven.

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THE MEMPHIS AND CHARLESTON RAILROAD CO.,
BY R. T. WILSON,
President.

THE MEMPHIS AND CHARLESTON RAILROAD CO.,
[L. S.] BY S. R. CRUSE,
Secretary and Treasurer.

317 STATE OF TENNESSEE, }
County of Shelby. }

Personally appeared before me Hudson Cary, Notary Public in and for said county, duly commissioned and qualified, S. R. Cruse, Secretary and Treasurer of the Memphis and Charleston Railroad Company, who is personally known to me both in his person and as such Secretary and Treasurer, who, being duly sworn, deposes and says and acknowledges that he executed the foregoing instru-
318 ment, being acquainted with its contents, for the purposes therein stated, in the interest and on the behalf of the Memphis and Charleston Railroad Company, and under authority granted him by resolution of the Board of Directors of said Company, passed at a meeting of said Board of Directors on the thirty-first day of May, eighteen hundred and seventy-seven.

Witness my hand and notarial seal this
319 June ninth, A. D. eighteen hundred and seventy-seven.

HUDSON CARY,
Notary Public.

AND WHEREAS, thereupon, the said Adrian Iselin and Adrian Iselin, Junior, with such consent and approbation of the said Railroad Company and of its Board of Directors, and in the manner and with
320 the effect so consented to, and under and in pursuance of, and in accordance with, the said sixth and seventh sections of the aforesaid Acts of February 25th, 1869, and the other laws of the said State of Tennessee in that behalf, paid to the said State of Tennessee, in the bonds of said State and coupons of such bonds at par, as allowed by law, the amount of the aforesaid indebtedness of the

said The Memphis and Charleston Railroad Company to the said State of Tennessee for or in respect of the amount of the bonds of the State of Tennessee, which, under the General Improvement law, passed February 11, 1852, and the other Acts of the Legislature of that State, were originally loaned, issued or delivered to or in aid of said company, and for the amount of certain Tennessee State bonds, issued to fund or provide for certain interest upon these bonds before mentioned, which, during a certain period, the said railroad company failed to provide for the aggregate amount of principal of said State bonds, including those so issued for funding interest, after deducting and giving credit for the amount theretofore paid on account by the said railroad company to the sinking fund, being one million six hundred and seventy-one thousand nine hundred and sixteen dollars twenty-five cents ($1,671,916.25), and there being also due by said railroad company to the State for interest accrued thereon, up to the first day of July, eighteen hundred and seventy-seven, the sum of sixty-four thousand nine hundred and ninety dollars ($64,990), making the whole amount of such indebtedness of said railroad company to the said State of Tennessee, and for which the said State held a lien as aforesaid, the sum of one million seven hundred and thirty-six thousand nine hundred and six dollars and twenty-five cents ($1,736,906.25) as of the first day of July, eighteen hundred and seventy-seven, and so much whereof as was principal bore interest from that date at the rate of six per cent. per annum, whereupon the said Adrian Iselin and Adrian Iselin, Junior, under and in pursuance of, and in accordance with, the statutes of the said State of Tennessee in that behalf became assignees of the said indebtedness of one million seven hundred and

thirty-six thousand nine hundred and six dollars and twenty-five cents ($1,736,906.25), owing from the said The Memphis and Charleston Railroad Company to the said State of Tennessee, with the interest thereon accrued and to accrue from and after the first day of July, eighteen hundred and seventy-seven, and became substituted and entitled to all the liens against said Railroad Company for the payment of said debt that the said State of Tennessee had by law and became entitled, as provided by the seventh section of the Act aforesaid, to have and to hold all the lien or liens which the said State of Tennessee had upon the said railroad or its property, and the same right to enforce the same which the said State of Tennessee had, and the said Adrian Iselin and Adrian Iselin, Junior, under and in pursuance of the said seventh section of the Act aforesaid, were thereupon placed in the same position and with the same rights which the State of Tennessee had previous to and before the said payment, and with full power to enforce the same; and thereupon the said Adrian Iselin and Adrian Iselin, Junior, received from the Governor and the Secretary of State of the the State of Tennessee their certificate in writing, as provided for by the said sixth and seventh sections of the Act aforesaid, a copy of which said certificate is as follows—that is to say:

We, James D. Porter, Governor of the State of Tennessee, and Charles N. Gibbs, Secretary of State of the State of Tennessee, do hereby certify, that Adrian Iselin and Adrian Iselin, Junior, composing the firm of A. Iselin & Co., of the City of New York, have this day filed with the Treasurer of the State of Tennessee the written consent of the Board of Directors of the Memphis and Charleston Railroad Company, and likewise the written assent and approbation of the said The Memphis and Charleston

Railroad Company, under the corporate seal of the 329
said Railroad Company, that the said Adrian Iselin and Adrian Iselin, Junior, composing the firm of A. Iselin & Co., may, under and in pursuance of the sixth and seventh sections of the Act of the Legislature of the State of Tennessee, entitled "An Act to Liquidate the State Debt contracted in aid of Railroad Companies in the State of Tennessee," passed the twenty-fifth day of February, eighteen hundred and sixty-nine, and the Acts of such Legislature in amendment thereof or supplementary 330
thereto, pay, so far as the State of Tennessee is concerned, in bonds of the State of Tennessee, or coupons of such bonds, at par, as by law of the State of Tennessee is authorized, the amount of the indebtedness hereinafter mentioned of the said Memphis and Charleston Railroad Company to the State of Tennessee; and that said Adrian Iselin and Adrian Iselin, Junior, composing the firm aforesaid, shall thereby and thereupon, as provided by the sixth section of said Act, be substi- 331
tuted and entitled to all the liens against said Company for the payment of said debt that the State of Tennessee had or has by law, and shall thereby and thereupon, as provided by the seventh section of said Act, be entitled to have and hold all the lien or liens which the State of Tennessee had or has upon said railroad, or its property, and shall have the same right to enforce the same which the State of Tennessee had, the object and intent being thereby declared to be to place the said Adrian 332
Iselin and Adrian Iselin, Junior, so paying, with the consent of said Railroad Company, in the same position, and with the same rights, which the State of Tennessee had previous to and before the said payment, and with full power to enforce the same.

And We do Further Certify that the said

Adrian Iselin and Adrian Iselin, Junior, composing the firm of A. Iselin & Co., have thereupon, with the consent and approbation of the said Railroad Company, and of the Board of Directors thereof, and under and in pursuance of and in accordance with the said sixth and seventh sections of the aforesaid Act of the twenty-fifth day of February, eighteen hundred and sixty-nine, and the other laws of the State of Tennessee, in that behalf paid to to the State of Tennessee, in the bonds of said State, and coupons of such bonds, at par, as allowed by law, the amount of indebtedness of the said The Memphis and Charleston Railroad Company to the State of Tennessee, and for which the State of Tennessee holds a lien by law upon said company's railroad in the State of Tennessee, and other property, which indebtedness is for or in respect of the amount of the bonds of the State of Tennessee which under the general improvement law passed the eleventh day of February, eighteen hundred and fifty-two, and the other Acts of the Legislature of said State, were originally loaned, issued, or delivered to or in aid of said company, and for the amount of certain Tennessee State bonds issued to fund or provide for certain interest upon those bonds, which during a certain period the said railroad company failed to provide, the aggregate amount of the principal of such State bonds, including those so issued for funding interest, after deducting and giving credit for the amount heretofore paid on account by the railroad company to the sinking fund being sixteen hundred and seventy-one thousand nine hundred and sixteen dollars and twenty-five cents ; as also the further amount of sixty-four thousand nine hundred and ninety dollars for interest accrued up to the first day of July, instant, upon the beforementioned amount of sixteen hundred and seventy-one thousand nine hundred and sixteen dollars and

twenty-five cents, making the whole amount of 337
such indebtedness of said railroad company to the
State of Tennessee, and for which the State holds a
lien as aforesaid, the aggregate sum of seventeen
hundred and thirty-six thousand nine hundred and
thirty-six dollars and twenty-five cents; exclusive
of interest accrued since the first day of July,
instant, which aggregate sum or amount, together
with the interest accrued thereon since the first day
of July, instant, the said Adrian Iselin and Adrian
Iselin, Junior, composing the firm of A. Iselin & 338
Co., have this day, in the manner and under the
circumstances aforesaid, paid to the State of Ten-
nessee, in Tennessee State bonds and coupons at
par, as allowed by the laws of said State; and we
do further certify and declare that thereupon, and
under and in pursuance of the sixth and seventh
sections of the said act of the twenty-fifth day of
February, eighteen hundred and sixty-nine, and the
other Acts of the Legislature of the State of Tennes-
see in that behalf, the said Adrian Iselin and Adrian 339
Iselin, Junior, composing the firm of A. Iselin & Co.,
have become and are the purchasers and assignees
of the above-mentioned indebtedness of the Mem-
phis and Charleston Railroad Company to the State
of Tennessee, with all the liens held by the said
State therefor, and with all the rights in that behalf
accorded or authorized by the said sixth and sev-
enth sections respectively of said act of the twenty-
fifth day of February, eighteen hundred and sixty-
nine, and the same are declared to be and are hereby 340
assigned and transferred to them accordingly; and
under and in accordance with the sixth section of
the said act of the twenty-fifth day of February,
eighteen hundred and sixty nine, it is hereby de-
clared that the said Adrian Iselin and Adrian Iselin,
Junior, are substituted and entitled to all the liens
against said railroad company for the payment of said

341 indebtedness that the State of Tennessee had or has by law, and under and in accordance with the seventh section of said Act of the twenty-fifth day of February, eighteen hundred and sixty-nine, it is hereby declared that said Adrian Iselin and Adrian Iselin, Junior, are entitled to have and to hold all the lien or liens which the State of Tennessee had or has upon said Memphis and Charleston Railroad or its property, and shall have the same right to enforce the same which the State of Tennessee had;
342 the object and intent being, and being hereby declared to be, to place the said Adrian Iselin and Adrian Iselin, Junior, composing the firm of A. Iselin & Co., in the same position, and with the same rights, which the State of Tennessee had previous to and before the said payment, and with full power to enforce the same.

IN WITNESS WHEREOF we have hereunto set our hands and official seals this twenty-fifth day of
343 July, eighteen hundred and seventy-seven.

(Signed) JAS. D. PORTER,
Governor of Tennessee.

(Seal of State of Tennessee.) CHAS. N. GIBBS,
Secretary of State.

AND WHEREAS, by means of the premises aforesaid, the said Adrian Iselin and Adrian Iselin, Junior, are now the lawful owners and holders of
344 the aforesaid indebtedness of the Memphis and Charleston Railroad Company, existing originally in favor of the said State of Tennessee, and amounting to the said sum of one million seven hundred and thirty-six thousand nine hundred and six dollars and twenty-five cents, with the interest accrued and to accrue thereon from and after the first day of July, eighteen hundred and seventy-seven; and

the said Railroad Company is indebted to the said 345
Adrian Iselin and Adrian Iselin, Junior, as assignees of the State as aforesaid, in that amount and with such interest, and the said Adrian Iselin and Adrian Iselin, Junior, are also now the holders, by assignment, as aforesaid, of the above mentioned statutory lien, in the nature of a mortgage originally existing in favor of the said State of Tennessee for the amount of the indebtedness, aforesaid, and of all the rights, liens, and securities which the said State of Tennessee had for or in re- 346
spect of said indebtedness, and the interest accrued and to accrue thereon, and are and will be entitled to the like rights and remedies for the enforcement of such liens, and for the securing and collecting of such indebtedness and interest thereon, as the State of Tennessee held or would have possessed and been entitled to if its said transfer to the said Adrian Iselin and Adrian Iselin, Junior had not been made.

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Now this Indenture Witnesseth, that the said The Memphis and Charleston Railroad Company, in consideration of one dollar to it in hand paid by the said Adrian Iselin and Adrian Iselin, Junior, at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and in consideration of the premises, and for other good and valuable considerations it thereunto moving, the receipt whereof is also hereby acknowledged, and in conformity with a provision in 348
that behalf contained in the consolidated mortgage hereinafter mentioned, doth hereby recognize, ratify and confirm the holding and ownership by the said Adrian Iselin and Adrian Iselin, Junior, under transfer from the State of Tennessee, as aforesaid, of the aforesaid indebtedness of said Railroad Company originally existing in favor of the State of

Tennessee, amounting to seventeen hundred and thirty-six thousand nine hundred and six dollars and twenty-five cents, due as of the first day of July, eighteen hundred and seventy-seven, with the interest accrued and to accrue thereon from that date, together with the lien which the State of Tennessee held therefor, and all the securities, rights and remedies therefor and in respect of the same and the enforcement thereof which the State of Tennessee had. And said Memphis and Charleston Railroad Company doth hereby covenant and agree to pay such indebtedness, with the interest accrued and hereafter to accrue thereon, to the said Adrian Iselin and Adrian Iselin, Junior, their representatives and assigns.

And for the consideration aforesaid the said Memphis and Charleston Railroad Company doth hereby covenant, grant declare and agree to and with the said Adrian Iselin and Adrian Iselin, Junior, their representatives and assigns, and to and with the said The Farmers Loan and Trust Company, as Trustee under and for the uses and purposes of this indenture, that the said Adrian Iselin and Adrian Iselin, Junior, and their representatives and assigns, including the said The Farmers' Loan and Trust Company, as assignee thereof in trust hereunder, and for the uses and purposes hereof, do and shall have and hold, and are and shall be entitled to all the same or the like liens and securities for and in respect of the aforesaid indebtedness of seventeen hundred and thirty-six thousand nine hundred and six dollars and twenty-five cents, and each and every part thereof, with the interest accrued and to accrue thereon from and after the first day of July, eighteen hundred and seventy-seven, and all the same or the like rights and remedies therefor and in respect thereof, and for the enforcement of the said liens and securities and the collection of the said in-

debtedness and such interest accrued and to accrue 453
thereon, as the State of Tennessee had or held, or was entitled unto or would have had, held and been entitled unto, if it had continued to be the holder and owner of such debt and of the liens and securities therefor; and that the same shall be paramount, prior, and superior to the lien of the consolidated mortgage dated the twentieth day of August, eighteen hundred and seventy-seven hereinafter mentioned; and that the said The Memphis and Charleston Railroad Company, and its suc- 354
cessors and assigns, shall and will, at any and all times hereafter, upon reasonable request therefor, make, do and execute all such further and other deeds, assurances and acts as, under the advice of counsel, shall be reasonably advised or devised or required from them in order to confirm and effectuate all such liens, securities, rights and remedies in and to the said Adrian Iselin and Adrian Iselin, Junior, and their representatives and assigns, including the said party of the second part hereto as 355
assignee in trust as aforesaid, according to the intention and purpose of this indenture.

And this Indenture further witnesseth, That the said The Memphis and Charleston Railroad Company, simultaneously with the execution and delivery hereof, for good and valuable consideration, it thereto moving has transferred and delivered over to the said Adrian Iselin and Adrian Iselin, Junior, as an additional collateral security to 356
them and their representatives and assigns for the aforesaid indebtedness of the said railroad company, originally existing in favor of the State of Tennessee, and assigned and transferred to, and now held by said Adrian Iselin and Adrian Iselin, Junior, as aforesaid, and now amounting, as aforesaid, to the sum of one million seven hundred and thirty-

six thousand nine hundred and six dollars and twenty-five cents, and for the interest accrued and to accrue thereon from and after the first day of July, eighteen hundred and seventy-seven, fourteen certain consolidated first mortgage bonds of the said The Memphis and Charleston Railroad Company, bearing date August twentieth, eighteen hundred and seventy-seven, each for the payment of the sum of one thousand dollars in United States gold coin, on the first day of January, nineteen hundred and fifteen, with interest thereon in the meantime at the rate of seven per cent. per annum, payable in like gold coin semi-annually, on the first days of January and July in each year, issued under and secured by the said railroad company's so-called consolidated mortgage or deed of trust, bearing date August twentieth, eighteen hundred and seventy-seven, to the said Farmers' Loan and Trust Company as trustee, made to secure an issue of consolidated bonds thereunder limited to the aggregate amount of four million seven hundred thousand dollars, which fourteen hundred bonds, so transferred and delivered to the said Adrian Iselin and Adrian Iselin, Junior, and numbered consecutively from (1) to fourteen hundred (1,400) both inclusive: *And* it is hereby expressly declared and agreed by and between the said The Memphis and Charleston Railroad Company and the said Adrian Iselin and Adrian Iselin, Junior, that such transfer and delivery to said Adrian Iselin and Adrian Iselin, Junior, of the said fourteen hundred bonds, numbers one to fourteen hundred inclusive, is not in anywise to operate as a payment of, or upon account of, the aforesaid indebtedness of the said Railroad Company to the said Adrian Iselin and Adrian Iselin, Junior, as assignees of the rights of the said State of Tennessee, as aforesaid, amounting to the above-mentioned sum of one million seven hundred

and thirty-six thousand, nine hundred and six dol- 361
lars and twenty-five cents, with interest as aforesaid; nor shall such transfer and delivery of such fourteen hundred bonds in any wise diminish, impair, nor affect the prior and paramount lien for the amount of such indebtedness and interest on the portion of said railroad, situated in the said State of Tennessee, with its appurtenances and equipments, and the other property in that State which originally existed in favor of the State of Tennessee, and which is now held by said Adrian Iselin and Adrian 362
Iselin, Junior, under transfer from said State as aforesaid; but, that notwithstanding such transfer and delivery to said Adrian Iselin and Adrian Iselin, Junior, of such fourteen hundred bonds, the said debt against said Railroad Company now held by them under transfer from said State of Tennessee, and the lien therefor originally existing in favor of said State, and vested in them by transfer as aforesaid, and all the rights and securities and remedies of the said Adrian Iselin and Adrian Iselin, Junior, 363
for the security of said indebtedness originally existing in favor of said State, with the interest thereon accrued and to accrue, or for the enforcement of the lien therefor, are to and shall remain in full force and effect, as if said fourteen hundred bonds had not been transferred and delivered as additional security therefor, as aforesaid, PROVIDED HOWEVER, and it is hereby agreed, that all sums which shall have been actually paid in cash by said Railroad Company, on account of interest or principal upon 364
said fourteen hundred bonds, or any of them, either to said Adrian Iselin and Adrian Iselin, Junior, or to any one holding any of such bonds by or under transfer by them are when such payments respectively are actually made and realized in cash, and not before, to be credited as payments on account of said original indebtedness to the State of Ten-

nessee, assigned to said Adrian Iselin and Adrian Iselin, Junior, as aforesaid, reckoning for the purpose of such credits such payments made in gold at the value thereof in United States legal tender currency at the time of payment, which payments received for interest on such fourteen hundred bonds, numbers one to fourteen hundred inclusive, shall be credited on account of the interest accruing subsequently to July first, eighteen hundred and seventy-seven, on said indebtedness originally existing in favor of the State, and assigned to Adrian Iselin and Adrian Iselin, Junior, as aforesaid, and which payments, if any, received for or on account of principal of such fourteen hundred bonds shall be applied on account of the principal of such indebtedness originally existing in favor of the State, and by it assigned over as aforesaid, and the interest thereon accrued up to July first, eighteen hundred and seventy-seven.

AND IT IS HEREBY FURTHER PROVIDED, DECLARED AND EXPRESSLY AGREED by and on the part of the said Memphis and Charleston Railroad Company that the said Adrian Iselin and Adrian Iselin, Junior, shall be entitled to sell or otherwise dispose of or transfer any or all of the said fourteen hundred bonds so transferred to them as they may deem fit, without thereby prejudicing or affecting the said original indebtedness to the State so assigned to them, or the said lien held therefor, or the rights or remedies of themselves or their assigns for or in respect of the same, and without subjecting themselves or their assigns to any present credit upon such indebtedness for or in respect of said bonds so sold or disposed of or transferred, but subject to the aforesaid obligation to give credit upon such original indebtedness for all payments made for principal or interest on

such bonds so sold or disposed of or transferred, 369
when such payments are actually made and realized in cash, but not before.

AND WHEREAS the said Adrian Iselin and Adrian Iselin, Junior, contemplate, in pursuance of the foregoing authorization and agreement in that behalf, or sell or dispose of or transfer the whole or portions, from time to time, of the said fourteen hundred consolidated first mortgage bonds for one thousand dollars each, now received by them 370
by way of additional collateral security for the said indebtedness as aforesaid, and to accompany such sale or disposal, or transfer of such bonds by transfer, to the holders or takers thereof respectively of beneficial interests in and to a trustee for their benefit of the legal title to a proportionate part of said original indebtedness of the said Railroad Company to the State of Tennessee, and of the liens and securities therefor, originally held by the State, and now vested by transfer in them as aforesaid. 371

NOW, THIS INDENTURE FURTHER WITNESSETH that the said Adrian Iselin and Adrian Iselin, Junior, in consideration of the premises, and to the end aforesaid, and in further consideration of one dollar to them in hand paid by the party of the second part, at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and with the consent and approval of the said The Memphis and Charleston Railroad Company, hereby given and attested by the ensealing 372
and delivery of these presents by the said Railroad Company, have assigned, transferred and set over, and do hereby assign, transfer and set over to the said The Farmers' Loan and Trust Company, party of the second part hereto, as trustee hereunder, and its successors and assigns, the aforesaid indebtedness of the said The Memphis and Charleston Rail-

road Company, originally existing in favor of the State of Tennessee, and now vested in the said Adrian Iselin and Adrian Iselin, Junior, by transfer from said State as aforesaid, amounting to the before-mentioned sum of one million seven hundred and thirty-six thousand nine hundred and six dollars and twenty-five cents ($1,736,906.25), with the interest accrued and to accrue thereon from and after the first day of July, eighteen hundred and seventy-seven, and likewise the aforesaid statutory lien, in nature of a mortgage, for the security of such indebtedness heretofore held by the State of Tennessee, and now vested by assignment in said Adrian Iselin and Adrian Iselin, Junior, as aforesaid, and all the liens, securities, rights and remedies whatsoever, for the security and collection of such indebtedness and the interest thereon accrued and to accrue, which the said Adrian Iselin and Adrian Iselin, Junior, now are vested with or entitled to, or at any time or times hereafter, but for the execution and delivery of this instrument, would or might be entitled to have, hold or exercise, *to be had and holden* by the said The Farmers' Loan and Trust Company as trustee, under this indenture, for the equal *pro rata* security and benefit of all such persons and corporations, including the said Adrian Iselin and Adrian Iselin, Junior, themselves, as from time to time shall be the holders of the before-mentioned fourteen hundred consolidated first mortgage bonds, numbered one to fourteen hundred inclusive, and so as that beneficial or equitable interest in the said indebtedness originally existing in favor of the State, including the interest thereon accrued and to accrue, and in the lien which was held by the State therefor, and in the rights and remedies in respect thereof, may (as it is hereby declared and agreed by the parties of the first and third part respectively shall be the case) vest equit-

ably in the holders from time to time of such four- 377
teen hundred collateral bonds, numbered one to fourteen hundred inclusive, including the said Adrian Iselin and Adrian Iselin, Junior, themselves, in respect of so many of said fourteen hundred bonds as may remain in their hands untransferred by them, with *pro rata* equality in proportion to the respective amounts of such fourteen hundred bonds held by such parties respectively. And so that the holder of each of such fourteen hundred bonds numbers one to fourteen hundred inclusive, shall 378
be entitled to a proportionate beneficial interest in such amount or proportion of the said indebtedness originally existing in favor of the State, with the interest there accrued and to accrue, and the said lien and rights held for the security thereof, corresponding with the principal and interest of such bond so held by him, and with the proper proportionate addition thereto, by reason of the principal and interest of such bond being payable in gold instead of currency; but the legal title to such 379
original indebtedness, with its attendant liens and securities remaining, nevertheless, vested in the said party of the second part hereto in trust for the holders of said fourteen hundred collateral bonds as aforesaid, and to the end and intent that, notwithstanding any sale or disposition or transfer which may be made by said Adrian Iselin and Adrian Iselin, Junior, of such fourteen hundred collateral bonds, numbered one to fourteen hundred inclusive, the said debt and lien originally existing in favor of 380
the State, and preserved in full force, and assigned and transferred to the said The Farmers' Loan and Trust Company, as trustee hereunder as aforesaid, and the said bonds held as further collateral security therefor may, in substance and effect, be beneficially held by or for the account and benefit of the same persons, and that the parties may sub-

381 stantially, in respect of beneficial or equitable interests, be in like position as if the said original debt and lien and the said fourteen hundred bonds, held as collateral security therefor, had all continued to be held by said Adrian Iselin and Adrian Iselin, Junior, or had been altogether assigned over by them to the same person or persons.

AND IT IS HEREBY FURTHER PROVIDED AND DECLARED, that the party of the second part hereto,
382 as trustee as aforesaid, shall endorse upon said fourteen hundred consolidated bonds, numbers 1 (one) to 1400 (fourteen hundred) inclusive, a certificate subscribed on behalf of the said party of the second part by its President, which shall be substantially in the following form, viz:

"It is hereby certified that Adrian Iselin and Adrian Iselin, Junior, as assignees from the State of Tennessee of a debt originally due by the Memphis and Charleston Railroad Company to the State of
383 Tennessee, amounting as stated, including interest to the first day of July, eighteen hundred and seventy-seven, to seventeen hundred and thirty-six thousand nine hundred and six dollars and twenty-five cents, and of the State's prior lien therefor upon said Company's railroad line in Tennessee and other property in that State, have, with said Railroad Company's consent, executed and delivered an instrument dated the twenty-first day of August, eighteen hundred and seventy-seven, assigning said
384 original debt and lien to The Farmers' Loan and Trust Company as trustee, as an additional and special security for the fourteen hundred consolidated bonds of this issue, numbers one to fourteen hundred inclusive, whereof this is one, reference to which instrument is hereby made for showing the securities and rights acquired thereunder by the holders of said fourteen hundred bonds.

"Dated the twenty-first day of August, eighteen 385
hundred and seventy-seven.

"THE FARMERS' LOAN AND TRUST COMPANY,

"By R. G. ROLSTON, *President.*"

And the said parties of the first part, with the consent of the said parties of the third part, do hereby covenant, declare and agree to and with the party of the second part, as trustee for the benefit of the holders from time to time of said fourteen hundred 386
bonds, numbers one to fourteen hundred inclusive, and likewise to and with all such persons as shall from time to time become transferees or holders of any of such fourteen hundred bonds, having endorsed thereon such certificate substantially in the form to the effect aforesaid, that all such holders from time to time of any of such fourteen hundred bonds having such certificate endorsed thereon shall be possessed of and entitled to such proportional beneficial or equitable interest as is hereinbefore 387
declared or provided for in the said debt originally due from the Memphis and Charleston Railroad Company to the State of Tennessee, and the interest accrued or to accrue thereon, and in the said lien originally held by the State therefor, and in the rights, liens and securities in respect thereof transferred by the State to Adrian Iselin and Adrian Iselin, Junior, as aforesaid, and hereby vested in the party of the second part as trustee as aforesaid, as likewise to all others their equitable rights as 388
beneficiaries of the trust created by this indenture.

AND inasmuch as under the terms and conditions of this instrument, and under and in virtue of the terms and conditions of the mortgage or deed of trust securing the issue of consolidated first mortgage bonds whereof said fourteen hundred bonds from one to fourteen hundred inclusive form part,

as by reference to that mortgage or deed of trust will appear, there will exist a double lien and security for substantially the same amount or debt in favor of the holders of said debt and lien originally held by the said State of Tennessee, and assigned over to Adrian Iselin and Adrian Iselin, Junior, as aforesaid, and now transferred to the party of the second part in trust as aforesaid, and of the holders of the said fourteen hundred bonds numbered from one to fourteen hundred inclusive, held as further collateral security therefor, and which double lien, as to a part thereof, will exist upon the same subject matter, namely, the said railroad in Tennessee, with its appurtenances and equipments, and the other property in that State subject to the State lien, although, as to other portions of the property covered by the said consolidated mortgage, situate in the States of Alabama and Mississippi respectively, the said State lien now vested in Adrian Iselin and Adrian Iselin, Junior, as aforesaid, has no application or operation. Now, it is hereby declared, provided, granted and agreed by and between all the parties hereto, in conformity with the provisions and declarations in that behalf contained in the said consolidated mortgage securing the issue of bonds, whereof the said fourteen hundred bonds numbered from one to fourteen hundred inclusive form part, that such double lien and security is intended to and shall exist, and that neither of such liens or securities shall prejudice the efficacy of the other; and that the State lien held by assignment as aforesaid, and now vested in the said The Farmers' Loan and Trust Company as trustee under this indenture, and for the uses and purposes thereof may be enforced, and all the rights and remedies in respect thereof may be held and had as fully and completely and effectually as if the lien and security in virtue of the holding of such fourteen hundred

bonds as further collateral security as aforesaid did 393
not exist, and that the holders from time to time of such fourteen hundred bonds so transferred by way of further collateral security for such original debt shall be entitled, as fully and completely and effectually as if the said original lien and security for the original debt, as further security for which said fourteen hundred bonds are transferred, did not exist, to their equal *pro rata* share and proportion in like manner with the holders of other bonds, numbers 1401 (fourteen hundred and one) to 4,700 394
(four thousand seven hundred) inclusive, to be issued under and secured by the said consolidated mortgage, or such of said other bonds as may from time to time be outstanding, of the benefit of all the securities and liens provided by the said consolidated mortgage, and of the proceeds and fruits thereof, and of any foreclosure or enforcement of the same, including as well the mortgaged premises (situate in Alabama and Mississippi) as the other mortgaged premises, save and except that if, prior to making 395
apportionment and distribution between the holders of the bonds secured by the said consolidated mortgage of the net proceeds of any foreclosure, or other legal enforcement thereof, any net sum shall have been actually collected and realized in cash by means of legal enforcement of the said lien originally held by the State of Tennessee and assigned over to Adrian Iselin and Adrian Iselin, Junior, as aforesaid, and now vested in the said The Farmers' Loan and Trust Company, as trustee under this in- 396
denture, by giving proper credit wherefor, after first deducting therefrom all proper expenses and charges incurred in respect of the proceedings for such enforcement and collection, including the compensation of the said party of the second part as trustee in respect thereof, the then unpaid amount of said indebtedness of the Railroad Company

originally existing in favor of the State, and by it transferred over as aforesaid, and as collateral security for which said fourteen hundred bonds, numbers one to fourteen hundred inclusive, shall be reduced below the principal of such fourteen hundred bonds, and the interest thereon accrued and unpaid at the time of such apportionment and distribution, having due regard to the circumstance that said bonds are payable in gold, and therefore reducing the amount of such net credit or deduction realized in legal tender currency to the value thereof in gold when collected and realized, then and in such case, for the purpose of making such apportionment and distribution between the respective bondholders secured under said consolidated mortgage of the net proceeds of such foreclosure or other legal enforcement of said consolidated mortgage, the said fourteen hundred bonds, numbers one to fourteen hundred inclusive, instead of being reckoned at their face value, with their accrued and unpaid interest, shall be reckoned as being only for an amount equal to such reduced amount, computed as aforesaid, remaining unpaid at the time of such apportionment and distribution upon the said indebtedness of said railroad company originally existing in favor of the State of Tennessee, and by it transferred over as aforesaid, and for which the said fourteen hundred bonds shall stand as security as aforesaid, and such apportionment and distribution between such fourteen hundred bonds and the other outstanding bonds secured by the said consolidated mortgage shall be made accordingly, and it being always understood and hereby agreed and provided, that the double lien and security aforesaid will not and shall not be allowed so to operate as to produce an actual double payment or satisfaction, but that all payments actually received and realized in money by means of

either security will and shall, to the extent of such 401
actual payments realized, go in reduction of such original debt and of said collateral bonds held as security therefor, but making the proper allowance for difference between gold and currency as aforesaid.

AND, in consideration of the addition collateral security now given to them as aforesaid, and as part of the bargain and arrangement between the said Adrian Iselin and Adrian Iselin, Junior, and the 402
Memphis and Charleston Railroad Company, in respect of the premises which is evidenced by this Indenture, the said Adrian Iselin and Adrian Iselin, Junior, do hereby consent and agree to and with the said, the Memphis and Charleston Railroad Company, that they will eventually reduce the amount of their said claims and demands against said railroad company, and the lien and security therefor under the said assignment and transfer from the State of Tennessee to them, so that when 403
they or their assigns shall have actually received and realized in cash by net payments, as on account of the said present amount of the said indebtedness of one million seven hundred and thirty-six thousand nine hundred and six dollars and twenty-five cents ($1,736,906.25), in United States legal tender currency, due July first, eighteen hundred and seventy-seven, a sum equal to fourteen hundred thousand dollars ($1,400,000) in United States gold coin, reducing currency realizations or pay- 404
ments to gold values as elsewhere provided, and when they or their assigns shall have actually received and realized in cash by net payments, on account of interest accruing at the rate of six per cent. per annum, payable semi-annually on the first days of January and July, upon the said currency indebtedness of one million seven hundred

and thirty-six thousand nine hundred and six dollars and twenty-five cents ($1,736,906.25) a sum equal to seven per cent. per annum in United States gold coin, from the first day of July, eighteen hundred and seventy-seven, payable semi-annually on the first days of January and July, upon such sum of fourteen hundred thousand dollars ($1,400,000) gold, until payment and realization in cash as aforesaid of that principal sum, reducing currency realizations or payments to gold values as elsewhere provided, the residue of such currency indebtedness of seventeen hundred and thirty-six thousand nine hundred and six dollars and twenty-five cents ($1,736,906.25), and of the interest accruing thereon, from and after July first, eighteen hundred and seventy-seven, shall be thereupon given up, released and discharged to said railroad company.

PROVIDED HOWEVER, and it is understood as a condition thereof, that the said the Memphis and Charleston Railroad Company shall, as they hereby agree they will, bear, pay, and discharge all the expenses and charges attendant upon the collection and receipt of such moneys on account of the principal and interest (or either) of such indebteduess originally existing in favor of the State, and of all legal and other proceedings had or taken for the recovery thereof, including the compensation of the party of the second part, as Trustee, in respect of such collection, receipt, and legal and other procoedings.

AND IT IS AGREED that this stipulation on the part of said Adrian Iselin and Adrian Iselin, Junior, shall bind their representatives and assigns, including the said The Farmers' Loan & Trust Company, as assignee of such debt in trust for the purpose of this Indenture, whereunto the said The Farmers'

Loan and Trust Company, as such Trustee, does 409
hereby assent.

IT IS FURTHER UNDERSTOOD AND AGREED, that for the purpose of this stipulation and agreement all cash payments received and realized, for principal or interest, upon such fourteen hundred bonds, numbered from one to fourteen hundred inclusive, or any of them, by parties holding such bonds, by or under transfer from said Adrian Iselin and Adrian Iselin, Junior, shall be of like legal 410
effect as if the said moneys were received by said Adrian Iselin and Adrian Iselin, Junior, themselves.

AND IT IS HEREBY FURTHER PROVIDED, DECLARED, GRANTED AND AGREED that all net sums or amounts which shall be received or in anywise realized by the said The Farmers' Loan and Trust Company, as Trustees under this Indenture, for or in respect of, or from or by reason of the indebtedness of the Memphis and Charleston Railroad Com- 411
pany, originally existing in favor of the said State of Tennessee, and hereby assigned to the Farmers' Loan and Trust Company as Trustees as aforesaid, or by means of enforcement in any form of the said statutory lien in the nature of a mortgage or of any other liens or securities for such indebtedness held by the said The Farmers' Loan and Trust Company as Trustees under this Indenture, shall, after first deducting therefrom all proper expenses and charges in the premises, including the compensation of the 412
Trustee in respect thereof, be divided with *pro rata* equality among all and singular the holders of the said fourteen hundred bonds issued under and secured by the said consolidated mortgage, and numbered from one to fourteen hundred inclusive, in proportion to the amounts of principal and interest due or owing at the time being upon such

fourteen hundred bonds; and it being understood and agreed that the said Adrian Iselin and Adrian Iselin, Junior, shall be entitled to participate therein for or in respect of such of the said fourteen hundred bonds as they may retain in their own hands unsold or undisposed of in like manner as holders of any of such bonds under the transfer thereof from them; and it being further understood that the holders of such fourteen hundred bonds are not to receive in the whole a greater sum than the amounts in gold of the principal and interest of their bonds, reducing the currency realizations or credits or payments to the gold values thereof at the time of realization or payment as aforesaid.

And the said Adrian Iselin and Adrian Iselin, Junior, with the assent and concurrence of the said The Memphis and Charleston Railroad Company, which is hereby given, do hereby authorize and empower the said The Farmers' Loan and Trust Company as Trustee as aforesaid in any and every case of the occurrence of such default on the part of said railroad company or of the existence otherwise of such circumstances as to authorize any proceedings either at law or in equity, or by entry into possession and receipt of income or otherwise howsoever, for the enforcement of the lien which was originally held by the State of Tennessee for security of the aforesaid indebtedness of the said railroad company to the State, and which was transferred and assigned by the State to said Adrian Iselin and Adrian Iselin, Junior, as aforesaid, or for the collecting or securing of such indebtedness and the interest thereon accrued or to accrue, or either such principal or interest or any part thereof, to take any and all such proceedings either at law or in equity, or by entry into possession and receipt of income or otherwise howsoever, for any and all of the purposes and ends

aforesaid, either in the name and as the attorneys 417
of the said Adrian Iselin and Adrian Iselin, Junior, or otherwise as may be deemed expedient, and to do all acts and things needful or proper to such ends.

AND IT IS HEREBY PROVIDED, DECLARED AND AGREED that the said the Farmers' Loan and Trust Company, in case it shall be called upon to take any legal or other steps or proceedings for the enforcement of the lien of for collection of the said 418
indebtedness hereby assigned to it, shall be entitled to receive just and proper compensation for all the services it shall render in and about such steps or proceedings, as well as for any other services it may properly render in the performance of its duties as such Trustee, as also indemnity for its proper disbursement in the premises, which compensation and indemnity shall be borne and paid by the said Railroad Company, and if not so paid by the said Railroad Company directly may be deducted from the 419
sums collected or received by it as such Trustee, in the accounting for such moneys and application thereof to the purposes of this trust. The Trustee, however, shall not be compelled to commence such foreclosure proceedings until the parties requesting the same shall have furnished the said Trustee with satisfactory indemnity for all costs and charges.

AND IT IS FURTHER PROVIDED, DECLARED AND AGREED that in case of a vacancy at any time occurring in the Trusteeship of the party of the 420
second part hereunder or its successor or successors, either by resignation duly accepted by a majority in amount of said bondholders who are beneficiaries of the trust, removal, death or otherwise howsoever, such vacancy may be filled by the concurrent action in writing under seal of a majority in amount of the holders of said fourteen hundred bonds, numbers

421 one to fourteen hundred inclusive, who are the beneficiaries of the trust; and that the party of the second part or any of its successors as Trustee thereunder, howsoever appointed, may at any time be removed from the trust by concurrent action in writing under seal of a majority in amount of the holders of the said fourteen hundred bonds, numbers one to fourteen hundred inclusive, and in default of filling a vacancy by such majority in amount of such bondholders the same may be filled
422 by the appointment of a new Trustee or Trustees by the Supreme Court of the State of New York, in the City of New York, upon appropriate proceedings for the purpose, which Trustee so appointed shall nevertheless, in like manner with any other Trustee hereunder, be subject to removal by a majority in interest of the bondholders as aforesaid, and further that in the filling of a vacancy in the Trusteeship there may be either one or two Trustees appointed to fill the vacancy, and either another
423 corporation having legal capacity for the trust or one or two individual Trustees may be appointed to fill any vacancy, and that all succeeding Trustees duly appointed shall be vested with the trust and all the estates, rights, interests, powers and duties vested in the said party of the second part as Trustee hereunder in like manner and with like effect as the original Trustee.

AND INASMUCH as there are lands in the City of
424 Memphis which were procured or intended for use as depot grounds, or for sites for depots, shops or other buildings, now belonging to the said The Memphis and Charleston Railroad Company, and subject to the aforesaid lien originally existing in favor of the State of Tennessee, and assigned to Adrian Iselin and Adrian Iselin, Junior, and now assigned to the party of the second part hereto

as Trustee hereunder, and which are partly now in use for such purposes and partly not so in use, and which lands are of much greater extent and value than is required for the uses of the said railroad, and may be advantageously sold and disposed of in aid of the general funds of the said Railroad Company, now it is hereby declared, granted, provided and agreed, that in case the said Railroad Company shall sell, or contract to sell, any of such lands in the City of Memphis which it shall decide no longer to use for the purposes of its said railroad, or the operation thereof, and shall require to have released from the lien held by the party of the second part, or its successors, as Trustee under this indenture, in order to give a title to the purchaser thereof free from such lien, it shall be competent and lawful for the said party of the second part, or its successor or successors, as trustee hereunder, and it and they are hereby authorized and empowered to release by proper deed or deeds, or instruments in the law for the purpose, from the aforesaid lien originally existing in favor of the State of Tennessee, and vested by assignment in the party of the second part hereto as trustee as aforesaid, and from any and all lien thereon of the said party of the second part, or its successor or successors, as trustee hereunder, any and from time to time all such lands in the City of Memphis so disused for the purposes of said railroad, and so sold or disposed of by said railroad company; Provided always, that if at the time of such release the said Adrian Iselin and Adrian Iselin, Junior, or either of them, shall be living and not absent from the United States, and not mentally incapacitated, they or one of them so living, and not absent nor incapacitated, must, as a condition of the efficacy of such release, assent in writing to the giving thereof, which assent may be by writing in the release; and

429 provided further, that in case of the sale and release as aforesaid of any of such lands in Memphis so disused, if any other lands shall be procured by said railroad company to be used in place thereof, or substitution therefor, for depot grounds or sites for buildings, or other purposes of such railroad, or its operating, such substituted lands shall be subject to the like lien in favor of the said party of the second part, or its successors or successor, as trustee hereunder, as were such released lands. And the
430 said railroad company shall, by proper deed or instrument, confirm and assure, and, if need be, execute such lien upon such substituted lands, and upon all buildings and other improvements placed thereon, to and in favor of the said party of the second part, as trustee hereunder, or its successor or successors.

And inasmuch as the party of the second part hereto is trustee under the before-mentioned con-
431 solidated mortgage for the benefit of the holders of all the said consolidated bonds, numbers one to four thousand seven hundred inclusive, as well as trustee under this Indenture in respect of the special trust created, and special and additional security thereby given for the special and separate benefit of the holders of said fourteen hundred bonds, numbers one to fourteen hundred inclusive, it is hereby declared and agreed, in conformity with a provision in that regard contained in said consolidated mort-
432 gage, that such circumstances of the said the Farmers' Loan and Trust Company being likewise trustee under the said consolidated mortgage, shall in no wise detract from, affect or impair the special and exclusive rights and securities of the holders of said fourteen hundred bonds, numbers one to fourteen hundred inclusive, held by them through the said trusteeship of the said party of the second

part, under this Indenture, for their separate use 433
and benefit as aforesaid.

AND THIS INDENTURE FURTHER WITNESSETH that the said Adrian Iselin and Adrian Iselin, Junior, in consideration of the premises, do hereby for themselves and their representatives covenant and agree to and with the said party of the second part, as trustee under this Indenture, and for the uses and purposes thereof, and to and with all such persons and corporations as shall from time to time become or be lawful owners or holders of any of the before 434
mentioned fourteen hundred bonds, numbers one to fourteen hundred inclusive, having endorsed thereon such certificate of the party of the second part by its President, as is above provided for, that they said Adrian Iselin and Adrian Iselin, Junior, and their representatives, shall and will at any time, and all times hereafter, upon reasonable request therefor, and at the expense of the party requesting the same, make, do and execute all such further and other acts, deeds, conveyances or assurances, as 435
under the advice of competent counsel shall be deemed necessary or advisable, in order to confirm, assure and make effectual the assignment and transfer hereinbefore contained or intended to be made to the party of the second part as trustee for the benefit and security of the holders of said fourteen hundred bonds, numbers one to fourteen hundred inclusive, in accordance with the true intent and meaning hereof, to effectuate the objects and purposes of this Indenture. 436

IT IS HEREBY FURTHER PROVIDED, DECLARED AND AGREED that in the case of the party of the second part, trustee hereunder, entering upon and taking possession of the said Railroad and other property in the State of Tennessee, covered by the said lien originally held by the State, and hereby assign to

437 the party of the second part, as trustee hereunder, in consequence of default made by said Railroad Company, entitling it so to do, it shall be lawful and competent for such trustee to employ an agent or agents for the performance of any such duties, acts and things in and about taking and maintaining such possession, and using, operating, maintaining and managing the said Railroad, and collecting the income, earnings and profits thereof, and performing the other duties of the trust created
438 hereby, as such trustee may deem fit, and for the performance of any other acts in and about such possession and management, the performance wherof can be properly delegated to an agent; and that such trustee, provided it shall have exercised reasonable prudence and care in the selection and employment of such agent or agents for any of such purposes, shall not be responsible for losses or damages in the premises caused by the act, neglect or default of such agent or agents. But this
439 provision is not intended, and shall not be so construed as to exempt the trustee in case of sale being made of the said premises covered by the lien in enforcement of such lien, from due responsibility to the bondholders hereby secured for the due application of the proceeds of such sale, received either by the trustee or by any agent or agents whom it may see fit to employ to receive such proceeds of sale.

440 And the said the Farmers' Loan and Trust Company, Trustee hereunder, and its successors are hereby released from executing the bond required from trustees by the laws of Tennessee and from giving any bond or security as trustee or trustees under this Indenture which may or might otherwise be required by the laws of either of the States of Tennessee, Mississippi and Alabama.

And said party of the second part hereby accepts 441
the trust hereby created and agrees to perform the duties thereof.

IN WITNESS WHEREOF, the said parties of the first part have hereto set their hands and seals, and the party of the second part, in pursuance of a resolution of its Board of Directors, hath hereunto affixed its corporate seal and caused the same to be attested by its President.

And the said party of the third part, in pursuance 442
of a resolution of its Board of Directors, have hereunto affixed its corporate seal and caused the same to be attested by its President and Secretary the day and year first above written.

ADRIAN ISELIN, (Seal.)

Witnesses,
W. H. CLARKSON, ADRIAN ISELIN, JR. (Seal.)
CHARLES NETTLETON, A. ISELIN & CO. (Seal.)

THE FARMERS' LOAN AND TRUST CO. 443
(Seal.) By R. G. ROLSTON, *President.*

THE MEMPHIS AND CHARLESTON RAILROAD CO.
(Seal.) By R. T. WILSON, *President.*
By S. R. CRUSE, *Secretary.*

STATE OF NEW YORK, } 444
City and County of New York. } ss.

BE IT REMEMBERED, That on the 21st day of August, A.D. 1877, before me, CHARLES NETTLETON, a Commissioner of Deeds of the State of Tennessee, in and for the State of New York, residing in said City of New York, personally appeared R. T. WILSON, the President of the Memphis and

445 Charleston Railroad Company, the foregoing named bargainer, with whom I am personally acquainted, and who acknowledged that he executed the foregoing instrument for the purpose therein contained, as his act and deed as such president, and the act and deed of said Memphis and Charleston Railroad Company. And, being duly sworn, he did depose and say, that he is the President of the said Memphis and Charleston Railroad Company, and that the seal affixed to the foregoing instrument, pur-
446 porting to be the corporate seal of said company, is such corporate seal, and that it was affixed thereto by order of the Board of Directors of said company, and that he signed his name thereto by the like order as such president. And, on the 29th day of August, A.D. 1877, before me also personally appeared ROSEWELL G. ROLSTON, the President of the Farmers' Loan and Trust Company, of New York, the foregoing named trustee, with whom I am personally acquainted, and who acknowledged that he
447 executed the foregoing instrument for the purpose therein contained, as his own act and deed, and the act and deed of the said Farmers' Loan and Trust Company. And, being by me duly sworn, he did depose and say, That he is the President of the said Farmers' Loan and Trust Company, and that the seal affixed to the foregoing instrument, purporting to be the corporate seal of said company, is such corporate seal, and that it was affixed thereto by order of the Board of Directors of said company,
448 and that he signed his name thereto by the like order, as such president. And, on the said 29th day of August, A.D. 1877, before me also personally appeared ADRIAN ISELIN and ADRIAN ISELIN, JR., composing the firm of A. ISELIN & Co., the foregoing named bargainers, with whom I am personally acquainted, and who each acknowledged that they executed the foregoing instrument for the purposes

therein contained, as their act and deed, and the act 449
and deed of their said firm.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, this 29th day of August, A.D. 1877.

CHARLES NETTLETON,
Commissioner for Tennessee in New York.

(Seal.)

450

STATE OF NEW YORK, }
City and County of New York. } ss.

BE IT REMEMBERED, That on the 21st day of August, A.D. 1877, before me, CHARLES NETTLETON, a Commissioner of Deeds of the State of Alabama, in and for the State of New York, residing in said City of New York, personally appeared R. T. WILSON, the President of the Memphis and Charleston Railroad Company, whose name is signed to the 451
foregoing instrument, and who is known to me, and who acknowledged before me on that day that, being informed of the contents of said instrument, he executed the same voluntarily on the day the same bears date, as his act and deed, and the act and deed of the said Memphis and Charleston Railroad Company. And, being by me duly sworn, he did depose and say, that he is the President of the said Memphis and Charleston Railroad Company, and that the seal affixed to the foregoing instru- 452
ment purporting to be the corporate seal of said company, is such corporate seal, and that it was affixed thereto by order of the Board of Directors of said company, and that he signed his name thereto by the like order, as such president. And, on the 29th day of August, A. D. 1877, before me also personally appeared ROSEWELL G. ROLSTON, Presi-

453 dent of the Farmers' Loan and Trust Company, whose name is signed to the foregoing instrument, and who is known to me, and acknowledged before me on that day that, being informed of the contents of said instrument, he executed the same voluntarily on the day the same bears date, as his act and deed, and the act and deed of said Farmers' Loan and Trust Company. And, being duly sworn, he did depose and say, That he is the president of the said Farmers Loan and Trust Company, and that
454 the seal affixed to the foregoing Instrument, purporting to be the corporate seal of said Company, is such corporate seal, and that it was affixed thereto by order of the Board of Directors of said Company, and that he signed his name thereto by the like order, as such President. And on the said 29th day of August, A. D. 1877, before me also personally appeared Adrian Iselin and Adrian Iselin, Jr., composing the firm of A. Iselin & Co., and whose names are signed to the foregoing Instrument, and who
455 are known to me, and severally acknowledged before me on that day that, being informed of the contents of said Instrument, they executed the same voluntarily on the day the same bears date, as their act and deed, and the act and deed of their said firm.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official seal, this 29th day of August, A. D. 1877.

456

CHARLES NETTLETON.

Commissioner for Alabama, in New York.

(Seal.)

STATE OF NEW YORK, } ss : 457
City and County of New York. }

BE IT REMEMBERED, That on the 21st day of August, A. D. 1877, before me, Charles Nettleton, a Commissioner of Deeds of the State of Mississippi, in and for the State of New York, residing in the said City of New York, personally appeared R. T. Wilson, President of the Memphis and Charleston Railroad Company, who acknowledged that he signed, sealed and delivered the foregoing Instrument, as his act and deed, as such President, and the act and deed 458
of the said Memphis and Charleston Railroad Company. And, being by me duly sworn, he did depose and say, That he is the President of said Memphis and Charleston Railroad Company, and that the seal affixed to the foregoing Instrument, purporting to be the corporate seal of said Company is the corporate seal of said Company, and that it was affixed thereto by order of the Board of Directors of said Company, and that he signed his name thereto by the like order, as the President of 459
said Company. And, on the 29th day of August, A. D. 1877, before me also personally appeared Roswell G. Rolston, the President of the Farmers' Loan and Trust Company, of New York, who acknowledged that he signed, sealed and delivered the foregoing Instrument as his act and deed as such President, and the act and deed of the said Farmers' Loan and Trust Company. And, being by me duly sworn, he did depose and say, that he is the President of the said Farmers' Loan and Trust Com- 460
pany, and that the seal affixed to the foregoing Instrument, purporting to be the corporate seal of said Company, is such corporate seal, and that it was affixed thereto by order of the Board of Directors of said Company, and that he signed his name thereto by the like order, as such President. And on the said 29th day of August, A. D. 1877,

461 before me also personally appeared Adrian Iselin and Adrian Iselin, Jr., composing the firm of A. Iselin & Co., who each acknowledged that they signed, sealed and delivered the foregoing Instrument as their act and deed, and the act and deed of their said firm.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official seal, this 29th day of August,
462 A. D. 1877.

CHARLES NETTLETON,

Commissioner for Mississippi, in New York.

(Seal.)

STATE OF NEW YORK, }
City and County of New York. } ss :

BE IT REMEMBERED, That on this 10th day of
463 September, A. D. 1877, before me, Charles Nettleton, a Commissioner of Deeds of the State of Tennessee, in and for the State of New York, personally appeared S. R. Cruse, Secretary of the Memphis and Charleston Railroad Company, the within named bargainer, with whom I am personally acquainted, and who acknowledged that he executed the foregoing Instrument for the purposes therein contained, as his act and deed, and the act and deed of said Company.
464 And the said S. R. Cruse, being duly sworn, he did depose and say, that he was the Secretary of said Memphis and Charleston Railroad Company, and that the seal affixed to the foregoing instrument, purporting to be the corporate seal of said Company, was such corporate seal, and that it was so affixed thereto by order of the Board of Directors of said Company, and that he signed his name

thereto by the like order, as the Secretary of said Company. 465

In Witness Whereof, I have hereunto set my hand and affixed my Official seal, this 10th day of September, A. D. 1877.

CHARLES NETTLETON,
Commissioner for Tennessee in New York.

Seal.)

466

State of New York,
City and County of New York. } ss.:

Be it Remembered, That on this 10th day of September, A. D. 1877, before me, Charles Nettleton, a Commissioner of Deeds of the State of Alabama, in and for the State of New York, residing in said City of New York, personally appeared S. R. Cruse, Secretary of the Memphis and 467
Charleston Railroad Company, whose name is signed to the foregoing Instrument, and who is known to me, and who acknowledged to me on this day that, being informed of the contents of said Instrument, he executed the same voluntarily on the day the same bears date, as his voluntary act and deed, and the voluntary act and deed of said Company. And, being by me duly sworn, he did depose and say, that he was the Secretary of said Company, and that the seal affixed to the foregoing Instru- 468
ment, purporting to be the corporate seal of said Company, was such corporate seal, and that it was so affixed thereto by order of the Board of Directors of said Company, and that he signed his name thereto by the like order, as the Secretary of said Company.

469 IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official seal, this 10th day of September, A. D. 1877.

CHARLES NETTLETON,
Commissioner for Alabama in New York.
(Seal.)

STATE OF NEW YORK, }
470 *City and County of New York.* } ss.:

BE IT REMEMBERED, That on this 10th day of September, A. D. 1877, before me, CHARLES NETTLETON, a Commissioner of Deeds of the State of Mississippi, in and for the State of New York, residing in said City of New York, personally appeared S. R. CRUSE, Secretary of the Memphis and Charleston Railroad Company, who acknowledged that he signed, sealed and delivered the foregoing
471 Instrument as his act and deed as such Secretary, and the act and deed of said Company. And, being duly sworn, he did depose and say, that he was the Secretary of said Company, and that the seal affixed to the foregoing Instrument, purporting to be the corporate seal of said Company, is such corporate seal, and that it was so affixed thereto by order of the Board of Directors of said Company, and that he signed his name thereto as such Secretary, by the like order.

472 IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official seal, this 10th day of September, A. D. 1877.

CHARLES NETTLETON,
Commissioner for Mississippi in New York.

RESPONDENT'S EXHIBIT NO. 3. 473
W. H. D. L., Sp'l. Exr.

I, Marshall T. Polk, Treasurer of the State of Tennessee, do hereby certify that Adrian Iselin and Adrian Iselin, Junior, composing the firm of A. Iselin & Company, have this day, in pursuance of the sixth and seventh sections of the Act of the Legislature of Tennessee, entitled "An Act to liquidate the State debt contracted in aid of railroad companies in the State of Tennessee," passed Feb- 474
ruary 25th, 1869, filed in my office certified copies of certain resolutions of the Board of Directors of the Memphis and Charleston Railroad Company, and a certain written consent and agreement of said Memphis and Charleston Railroad Company under its corporate seal, duplicate copies of which resolutions and consent and agreement are hereunto annexed.

Given under my hand and official seal this twenty- 475
fifth day of July, eighteen hundred and seventy-seven.

MARSHALL T. POLK,
Treasurer.

476

RESPONDENT'S EXHIBIT NO. 3. 473
W. H. D. L., Sp'l. Exr.

I, Marshall T. Polk, Treasurer of the State of Tennessee, do hereby certify that Adrian Iselin and Adrian Iselin, Junior, composing the firm of A. Iselin & Company, have this day, in pursuance of the sixth and seventh sections of the Act of the Legislature of Tennessee, entitled "An Act to liquidate the State debt contracted in aid of railroad companies in the State of Tennessee," passed Feb- 474
ruary 25th, 1869, filed in my office certified copies of certain resolutions of the Board of Directors of the Memphis and Charleston Railroad Company, and a certain written consent and agreement of said Memphis and Charleston Railroad Company under its corporate seal, duplicate copies of which resolutions and consent and agreement are hereunto annexed.

Given under my hand and official seal this twenty- 475
fifth day of July, eighteen hundred and seventy-seven.

MARSHALL T. POLK,
Treasurer.

476

477 At a meeting of the Board of Directors of the Memphis & Charleston Railroad Company, held in the city of Memphis, on the thirty-first day of May, eighteen hundred and seventy-seven.

Present—R. T. Wilson, President; C. M. McGhee, Vice-President; Messrs. J. R. Mosby, Jerome Hill, W. S. Hastie, Napoleon Hill, W. W. Garth, J. D. Rather and George P. Bierne. Upon motion of Mr. Napoleon Hill, duly seconded, it was resolved, all
478 the members of the Board present voting in favor thereof, except George P. Bierne, as stated in the three resolutions next following, viz:

Resolved, That this Board hereby gives its consent and approbation, and that of the Company, that Adrian Iselin and Adrian Iselin, Junior, composing the firm of A. Iselin & Company, of the City of New York, may, so far as the State of Tennessee is concerned, pay this Company's indebtedness to the State of Tennessee for or in respect of the Ten-
479 nessee State bonds heretofore loaned or delivered to or in aid of this Company, and for which the State has a lien in Tennessee State bonds or coupons thereof, as provided for by the Act of the Legislature of Tennessee in that behalf, approved February 25th, 1869, and the Acts amendatory thereof, or supplementary thereto, and that by such payment said A. Iselin & Company shall acquire and be entitled to the rights, liens and securities in that behalf, provided for by the sixth and seventh sec-
480 tions respectively of the said Act of February 25th, 1869.

Resolved, That the President and Secretary of this Company be and are hereby authorized and directed to execute, under this Company's corporate seal, and with their signatures as such President and Secretary, an instrument substantially of the

form and effect following, in duplicate, and deliver 581
the same to said A. Iselin & Co., one copy thereof being intended to be filed with the State Treasurer of Tennessee, as follows, that is to say:

KNOW ALL MEN BY THESE PRESENTS, that whereas the Memphis and Charleston Railroad Company is indebted to the State of Tennessee, for or in respect of the amount of the bonds of the said State which were loaned or advanced or delivered to or in aid of said Railroad Company under the general internal 582
improvement laws of said State, or other laws of said State, in that behalf, and for which indebtedness of said Railroad Company the said State holds a lien upon said Company's railroad in the State of Tennessee, and other property of said Company, as provided by law, which indebtedness is for the amount of bonds of said State of Tennessee, originally loaned, issued, or delivered to or in aid of said Railroad Company, and for the amount of certain Tennessee State bonds issued to fund or provide for 583
certain interest upon those bonds, which during a certain period the said Railroad Company failed to provide for; the aggregate amount of principal of such bonds, including those so issued for funding interest, after deducting and giving credit for the amount heretofore paid on account by the Railroad Company to the sinking fund, being sixteen hundred and seventy-one thousand seven hundred dollars, be the same more or less, upon which principal there is due from the Railroad Company 584
to the State about fifteen thousand dollars for interest due on the first day of January last; and interest has accrued and is accruing upon the whole amount of said principal from the first day of January last, and such interest for six months will fall due on the first day of July next.

NOW, THIS INSTRUMENT, which is executed by the

said The Memphis and Charleston Railroad Company, under its corporate seal, in pursuance of a resolution of the Board of Directors of said Railroad Company specially authorizing the same, duly passed at a meeting of said Board duly held on the thirty-first day of May instant,

WITNESSETH that the said the Memphis and Charleston Railroad Company, and the Board of Directors of said Company, respectively have given and do give its and their consent and approbation, under and in pursuance of the Act of the Legislature of the State of Tennessee, entitled "An Act to Liquidate the State Debt contracted in aid of Railroad Companies in the State of Tennessee," passed the twenty-fifth day of February, eighteen hundred and sixty-nine, and the Acts of such Legislature in amendment thereof or supplementary thereto, that Adrian Iselin and Adrian Iselin, Junior, composing the firm of A. Iselin & Co., of the City of New York, may, so far as the State of Tennessee is concerned, pay the indebtedness of the Memphis and Charleston Railroad Company to the State of Tennessee for or in respect of the amount of bonds of said State which were heretofore loaned or advanced or delivered to or in aid of said Railroad Company, which indebtedness is that hereinbefore referred to; and that such payment of such indebtedness may be so made by said Adrian Iselin and Adrian Iselin, Junior, in the bonds of the State of Tennessee, or coupons of such bonds, at par, as allowed by the laws of said State in that behalf; and that said Adrian Iselin and Adrian Iselin, Junior, may and shall, upon so paying such indebtedness, to be substituted and entitled to all the liens against said Railroad Company, and against its property, for the payment of such indebtedness that the State of Tennessee had or has by law; and that said Adrian Iselin and Adrian

Iselin, Junior, upon so paying such indebtedness, 489
may receive from the Governor and Secretary of the State of Tennessee such certificate in that behalf as is provided for by the sixth section of the above mentioned Legislative Act of the twenty-fifth day of February, eighteen hundred and sixty-nine. And under and in pursuance of the seventh section of the Act last above mentioned, the said The Memphis and Charleston Railroad Company, and the Board of Directors of said Company, do hereby further respectively assent and agree that said Adrian Iselin 490
and Adrian Iselin, Junior, upon so paying the aforesaid indebtedness of the Memphis and Charleston Railroad Company to the State of Tennessee, so far as said State is concerned, in the bonds or coupons of said State as aforesaid, may and shall, upon filing with the Treasurer of the State of Tennessee this instrument, executed under the corporate seal of said Company, be entitled to have and hold all the lien or liens which the State of Tennessee had or has upon the railroad of said Memphis and Charles- 491
ton Railroad Company, or its property, and shall have the same right to enforce the same which the State of Tennessee had, the object and intent being (and being or hereby declared) in accordance with the seventh section of the said Act of the twenty-fifth day of February, eighteen hundred and sixty-nine, to place the said Adrian Iselin and Adrian Iselin, Junior, so paying such indebtedness, with the consent of said Railroad Company, in the same position and with the same rights which the State of 492
Tennessee had previous to and before the said payment, and with full power to enforce the same.

In Witness whereof the said Memphis and Charleston Railroad Company, in pursuance of a resolution of its Board of Directors as aforesaid, hath hereunto affixed its corporate seal, and caused these

493 presents to be executed on its behalf by its President and Secretary, the thirty-first day of May, eighteen hundred and seventy-seven. And this Board hereby agrees and gives its consent and approbation to everything stated or contained in the instrument above directed to be executed and delivered to said A. Iselin & Co.

Resolved, That the Secretary be directed to furnish to A. Iselin & Co., in duplicate, copies certified by him of these three resolutions.

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I HERE CERTIFY that the foregoing is a true copy from the minutes of a meeting of the Board of Directors of the Memphis and Charleston Railroad Company, held in the city of Memphis, Tennessee, on the thirty-first day of May, eighteen hundred and seventy-seven.

S. R. CRUSE,
Secretary and Traesurer of the Memphis
(Seal.) *and Charleston Railroad Co.*

495

KNOW ALL MEN BY THESE PRESENTS, that whereas the Memphis and Charleston Railroad Company is indebted to the State of Tennessee, for or in respect of the amount of the bonds of the said State which were loaned or advanced or delivered to or in aid of said railroad company under the general internal improvement laws of said State, or other laws of said State, in that behalf, and for which indebtedness of said railroad company the said State holds
496 a lien upon said company's railroad in the State of Tennessee, and other property of said company, as provided by law, which indebtedness is for the amount of bonds of said State of Tennessee, originally loaned, issued, or delivered to or in aid of said railroad company, and for the amount of certain Tennessee State bonds issued to fund or provide for certain interest upon those bonds, which during

a certain period the said railroad company failed to provide for; the aggregate amount of principal of such bonds, including those so issued for funding interest, after deducting and giving credit for the amount heretofore paid on account by the railroad company to the sinking fund, being sixteen hundred and seventy-one thousand seven hundred dollars, be the sume more or less, upon which principal there is due from the railroad company to the State about fifteen thousand dollars for interest due on the first day of January last; and interest has accrued and is accruing upon the whole amount of said principal from the first day of January last, and such interest for six months will fall due on the first day of July next. 497 498

NOW, THIS INSTRUMENT, which is executed by the said The Memphis and Charleston Railroad Company under its corporate seal, in pursuance of a resolution of the Board of Directors of said railroad company, specially authorizing the same, duly passed at a meeting of the said board, duly held on the 31st day of May, instant. 499

WITNESSETH, That the said The Memphis and Charleston Railroad Company, and the Board of Directors of said company respectively, have given, and do give its and their consent and approbation, under and in pursuance of the said Act of the Legislature of the State of Tennessee, entitled "An Act to liquidate the State debt contracted in aid of railroad companies in the State of Tennessee," passed February 25th, 1869, and the Acts of such Legislature in amendment thereof, or supplementary thereto, that Adrian Iselin and Adrian Iselin, Junior, composing the firm of A. Iselin & Company, of the City of New York, may, so far as the State of Tennessee is concerned, pay the indebtedness of the Memphis and Charleston Railroad Company to 500

the State of Tennessee for or in respect of the amount of bonds of said State, which were heretofore loaned or advanced or delivered to or in aid of said railroad company, which indebtedness is that hereinbefore referred to, and that such payment of said indebtedness may be so made by said Adrian Iselin and Adrian Iselin, Junior, in the bonds of the State of Tennessee or coupons of such bonds at pao, as allowed by the laws of said State in that behalf, and that said Adrian Iselin and Adrian Iselin, Junior, may and shall, upon so paying such indebtedness, be substituted and entitled to all the liens against said railroad company and against its property for the payment of such indebtedness that the State of Tennessee had or has by law; and that said Adrian Iselin and Adrian Iselin, Junior, upon so paying such indebtedness may receive from the Governor and Secretary of State of Tennessee such certificate in that behalf as is provided for by the sixth section of the above-mentioned legislative act of February 25th, 1869.

And under and in pursuance of the seventh section of the act last above mentioned the said The Memphis and Charleston Railroad Company, and the Board of Directors of said Company, do hereby further respectively assent and agree that said Adrian Iselin and Adrian Iselin, Junior, upon so paying the aforesaid indebtedness of the Memphis and Charleston Railroad Company to the State of Tennessee, so far as the said State is concerned, in the bonds or coupons of said State, as aforesaid, may and shall, upon filing with the Treasurer of the State of Tennessee this instrument, executed under the corporate seal of said Company, be entitled to have and hold all the lien or liens which the State of Tennessee had or has upon the Railroad of said Memphis and Charleston Railroad Company or its

property, and shall have the same right to enforce 505
the same which the State of Tennessee had, the object and intent being (and being so hereby declared) in accordance with the seventh section of the said Act of February 25th, 1869, to place the said Adrian Iselin and Adrian Iselin, Junior, so paying such indebtedness, with the consent of said Railroad Company, in the same position and with the same rights which the State of Tennessee had previous to and before the said payment, and with full power to enforce the same. 506

IN WITNESS WHEREOF, the said The Memphis and Charleston Railroad Company, in pursuance of a resolution of its Board of Directors, as aforesaid, have hereunto affixed its corporate seal and caused these presents to be executed on its behalf by its President and Secretary, the thirty-first day of May, eighteen hundred and seventy-seven.

THE MEMPHIS AND CHARLESTON RAILROAD CO., 507
BY R. T. WILSON,
President.

THE MEMPHIS AND CHARLESTON RAILROAD CO.,
[L. S.] BY S. R. CRUSE,
Secretary and Treasurer.

State of Tennessee,
County of Shelby. 508

Personally appeared before me Hunsdon Cary, a Notary Public in and for said county, duly commissioned and qualified, S. R. CRUSE, Secretary and Treasurer of the Memphis and Charleston Railroad Company, who is personally known to me both in his person and as such Secretary and Treasurer, who, being duly sworn, deposes and says and ac-

509 knowledges that he executed the foregoing instrument, being acquainted with its contents, for the purposes therein stated, in the interest and on the behalf of the Memphis and Charleston Railroad Company, and under authority granted him by resolution of the Board of Directors of said Company, passed at a meeting of said Board of Directors on the thirty-first day of May, eighteen hundred and seventy-seven.

510 Witness my hand and notarial seal this June ninth, A.D. eighteen hundred and seven-seven.

HUNSDON CARY,
Notary Public.

We, James D. Porter, Governor of the State of Tennessee, and Charles N. Gibbs, Secretary of State of the State of Tennessee, do hereby certify, that Adrian Iselin and Adrian Iselin, Junior, composing
511 the firm of A. Iselin & Co., of the City of New York, have this day filed with the Treasurer of the State of Tennessee the written consent of the Board of Directors of the Memphis and Charleston Railroad Company, and likewise the written assent and approbation of the said The Memphis and Charleston Railroad Company, under the corporate seal of the said Railroad Company, that the said Adrian Iselin and Adrian Iselin, Junior, composing the firm of A. Iselin & Co., may, under and in pursu-
512 ance of the sixth and seventh sections of the Act of the Legislature of the State of Tennessee, entitled "An Act to Liquidate the State Debt contracted in aid of Railroad Companies in the State of Tennessee," passed the twenty-fifth day of February, eighteen hundred and sixty-nine, and the Acts of such Legislature in amendment thereof or supplementary thereto, pay, so far as the State of Tennes-

see is concerned, in bonds of the State of Tennes- 513
see, or coupons of such bonds, at par, as by law of the State of Tennessee is authorized, the amount of the indebtedness hereinafter mentioned of the said Memphis and Charleston Railroad Company to the State of Tennessee; and that said Adrian Iselin and Adrian Iselin, Junior, composing the firm aforesaid, shall thereby and thereupon, as provided by the sixth section of said Act, be substituted and entitled to all the liens against said Company for the payment of said debt that the State of Tennes- 514
see had or has by law, and shall thereby and thereupon, as provided by the seventh section of said Act, be entitled to have and hold all the lien or liens which the State of Tennessee had or has upon said railroad, or its property, and shall have the same right to enforce the same which the State of Tennessee had, the object and intent being thereby declared to be to place the said Adrian Iselin and Adrian Iselin, Junior, so paying, with the consent of said Railroad Company, in the same position, 515
and with the same rights, which the State of Tennessee had previous to and before the said payment, and with full power to enforce the same.

And We do Further Certify that the said Adrian Iselin and Adrian Iselin, Junior, composing the firm of A. Iselin & Co., have thereupon, with the consent and approbation of the said Railroad Company, and of the Board of Directors thereof, and under and in pursuance of and in accordance with the said sixth and seventh sections of the 516
aforesaid Act of the twenty-fifth day of February, eighteen hundred and sixty-nine, and the other laws of the State of Tennessee, in that behalf paid to the State of Tennessee, in the bonds of said State, and coupons of such bonds, at par, as allowed by law, the amount of indebtedness of the the said The Memphis and Charleston Railroad

Company to the State of Tennessee, and for which the State of Tennessee holds a lien by law upon said Company's railroad in the State of Tennessee, and other property, which indebtedness is for or in respect of the amount of the bonds of the State of Tennessee which under the general improvement law passed the eleventh day of February, eighteen hundred and fifty-two, and the other Acts of the Legislature of said State, were originally loaned, issued, or delivered to or in aid of said Company, and for the amount of certain Tennessee State bonds issued to fund or provide for certain interest upon those bonds, which during a certain period the said Railroad Company failed to provide, the aggregate amount of the principal of such State bonds, including those so issued for funding interest, after deducting and giving credit for the amount heretofore paid on account by the Railroad Company to the sinking fund being sixteen hundred and sevetny-one thousand nine hundred and sixteen dollars and twenty-five cents; as also the further amount of sixty-four thousand nine hundred and ninety dollars for interest accrued up to the first day of July instant upon the before-mentioned amount of sixteen hundred and seventy-one thousand nine hundred and sixteen dollars and twenty-five cents, making the whole amount of such indebtedness of said Railroad Company to the State of Tennessee, and for which the State holds a lien as aforesaid, the aggregate sum of seventeen hundred and thirty-six thousand nine hundred and six dollars and twenty-five cents, exclusive of interest accrued since the first day of July instant, which aggregate sum or amount, together with the interest accrued thereon since the first day of July instant, the said Adrian Iselin and Adrian Iselin, Junior, composing the firm of A. Iselin & Co., have this day, in the manner and under the circumstances

aforesaid, paid to the State of Tennessee, in Ten- 521
nessee State bonds and coupons, at par, as allowed by the laws of said State; and we do further certify and declare that thereupon, and under and in pursuance of the sixth and seventh sections of the said Act of the twenty-fifth day of February, eighteen hundred and sixty-nine, and the other Acts of the Legislature of the State of Tennessee in that behalf, the said Adrian Iselin and Adrian Iselin, Junior, composing the firm of A. Iselin & Co., have become and are the purchasers and as- 522
signees of the above-mentioned indebtedness of The Memphis and Charleston Railroad Company to the State of Tennessee, with all the liens held by the said State therefor, and with all the rights in that behalf accorded or authorized by the said sixth and seventh sections respectively of said Act of the twenty-fifth day of February, eighteen hundred and sixty-nine, and the same are declared to be and are hereby assigned and transferred to them accordingly; and under and in accordance with the 523
sixth section of the said Act of the twenty-fifth day of February, eighteen hundred and sixty-nine, it is hereby declared that the said Adrian Iselin and Adrian Iselin, Junior, are substituted and entitled to all the liens against said Railroad Company for the payment of said indebtedness that the State of Tennessee had or has by law, and under and in accordance with the seventh section of said Act of the twenty-fifth day of February, eighteen hundred and sixty-nine, it is 524
hereby declared that said Adrian Iselin and Adrian Iselin, Junior, are entitled to have and hold all the lien or liens which the State of Tennessee had or has upon said Memphis and Charleston Railroad or its property, and shall have the same right to enforce the same which the State of Tennessee had; the object and intent being, and being hereby de-

525 clared to be, to place the said Adrian Iselin and Adrian Iselin, Junior, composing the firm of A. Iselin & Co., in the same position, and with the same rights, which the State of Tennessee had previous to and before the said payment, and with full power to enforce the same.

IN WITNESS WHEREOF we have hereunto set our hands and official seals this twenty-fifth day of July eighteen hundred and seventy-seven.

(Signed) JAS. D. PORTER,

526 *Governor of Tennessee.*

(Seal of State of Tennessee.) CHAS. N. GIBBS,
Secretary of State.

527

528

Deposition of Morris K. Jessup.

UNITED STATES CIRCUIT COURT, 1

WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement Bonds of Tennessee, issued to the MEMPHIS & CHARLESTON R. R. Co.

vs. 2

THE MEMPHIS & CHARLESTON R. R. Co. *et al.*

Testimony and proofs for final hearing, taken on the part of the respondents in the above-entitled suit, under and pursuant to the 67th Rule in Equity, as amended, before William H. DeLancey, Special Examiner, duly appointed herein. 3

52 Broadway,
New York, Feb. 21, 1880.

Present—Mr. W. Y. C. HUMES,
for Respondents, 4
Mr E. L. ANDREWS,
for Complainants.

5 MORRIS K. JESSUP, a witness, produced on the part of the respondents, being first duly cautioned and sworn in the above-entitled suit to testify the truth, the whole truth and nothing but the truth, deposes and says:

(Deposition taken subject to all legal objections of both parties.)

Direct examination by MR. HUMES:

6 1 Q. What is your residence and business and how long have you so resided and done business?

A. My residence is New York city, and my business that of a banker, and I have been in business for twenty-five years.

2 Q. Were you a purchaser of substitution railroad bonds of any railroad in Tennessee; if yea, when did you buy them, what amounts, and at what price, and what did you pay for them?

A. I bought substitution bonds of the Memphis
7 and Charleston Railroad Company. I can't give the exact date. I think about three years ago. I bought $50,000. I think the price was about 75. I paid in cash.

3 Q. When you bought them did you or not have any information of any claim by the holders of the State bonds of Tennessee that they had a lien on the road, or did you buy them in the confident belief that these substitution bonds carried and were supported by the lien from the State?

8 A. I bought these bonds with the assurance that they took the place of the State lien on the road, and that all the lien of the State on this road was subrogated to these bonds, and it was that fact that induced me to take these bonds at that price at that time.

4 Q. What was your information as to the holders of Tennessee State bonds, and their overdue unpaid coupons?

A. I had no particular information on that point. 9

5 Q. Did you or not know or have the information that the State of Tennessee during the war and for a number of years after the war failed to pay the interest coupons on her State bonds, and the holders had funded them into new State bonds under the acts of 1865, 1868 and 1873?

A. I knew the general fact that the State of Tennessee had defaulted on her coupons about the time stated, and that the same had been funded into new bonds. 10

Direct examination closed.

Cross examination by MR. ANDREWS.

6 x Q. From whom did you have the assurance that the bonds you were about purchasing were entitled to the Tennessee lien?

A. From Mr. R. T. Wilson; and then I called upon Mr. Southmayd.

7 x Q. What did you discuss with Mr. Southmayd? 11

A. I don't remember now; I knew that he had examined the question of the legality of this matter and the title to the lien.

8 x Q. What did R. T. Wilson say?

A. I can't tell; all I know is the impression I received as to the legality of the bonds; I cannot go into the details; I do not remember them.

9 x Q. Did R. T. Wilson tell you (or show to you) an opinion of Judges Davies and Davis to the 12 effect that those bonds did not have a lien on the Memphis and Charleston Railroad, but that the lien belonged to Tennessee State bonds?

A. I never saw such an opinion, at least I don't remember it; Wilson (not that I remember of) never told me of that opinion.

10 x Q. Did you ever hear of any litigation con-

13 cerning this matter, and what did you hear, if anything?

A. I heard, in a general way, that the Tennessee bondholders claimed the lien on the Tennesse Railroad, but this was after I purchased the bonds.

11 x Q. When and at what price did you sell the bonds which you have stated you did sell?

A. I sold the bonds September 29, 1877, at 85 and interest.

14 *Re-direct* by Mr. HUMES:

12 Q. The Davies and Davis opinion in the cross-examination referred to was uttered early in 1870; do you not know the fact that no State bondholder from 1870 to 1878 ever did, under the influence of that celebrated opinion, claim or demand the payment of a single interest coupon of a Tennessee State bond from any railroad company in Tennessee, nor institute any legal proceeding looking toward such a purpose?

15 A. I remember nothing on the subject.

Re-cross by Mr. ANDREWS:

13 x Q. Was not Henry E. Davies shortly before that time the chief judge of the Court of Appeals of the State of New York, and was not Noah Davis shortly before that time a Justice of the Supreme Court of the State of New York?

A. I cannot say.

16 MORRIS K. JESSUP.

Subscribed and sworn to before me, this 27th day of February, A. D. 1880.

WILLIAM H. DELANCEY,
Special Examiner.

I, William H. DeLancey, Special Examiner, duly 17
appointed by the Circuit Court of the United States for the Western District of Tennessee, to take the testimony and proofs of both parties in the above-entitled suit in the City of New York, do hereby certify that on the several days named in the deposition hereto annexed I was attended at my office, No. 52 Broadway, in the City of New York, by the counsel and witness aforesaid. That the said witness was duly cautioned and sworn in the above-entitled suit, and the deposition was reduced 18
to writing and read to the witness, and by him subscribed in my presence.

Dated, February 27, 1880.

WILLIAM H. DELANCEY,
Special Examiner.

19

20

Deposition of Joseph W. Drexel.

UNITED STATES CIRCUIT COURT,

WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement Bonds of Tennessee, issued to the Memphis and Charleston R. R. Co. 1

vs.

THE MEMPHIS AND CHARLESTON R. R. Co. *et al.* 2

Testimony and proofs for final hearing on the part of the respondents in the above entitled suit taken under and pursuant to the 67th Rule in Equity as amended, before William H. De Lancey, Special Examiner, duly appointed herein.

52 Broadway,
New York, March 1st, 1880. 3

Deposition taken by consent of Counsel in the above entitled suit before William H. De Lancey, Special Examiner.

(Deposition taken subject to all legal objections of both parties.)

Present—CHAS. H. TWEED,
Of Counsel for Defendants and Substitution Bondholders. 4

E. L. ANDREWS,
Of Counsel for Complainants.

5 JOSEPH W. DREXEL, a witness produced on the part of the respondents, being affirmed as a witness, testified as follows:

My name is Joseph W. Drexel; my age forty-nine: my residence New York City; no occupation; have retired from business.

1 Q. Before you retired from business, in what firms were you a partner?

A. In the firm of Drexel & Co., Phila., Drexel,
6 Winthrop & Co., of New York, until July, 1871, and of Drexel, Morgan & Co., and also Drexel, Harjes & Co., Paris; I retired from the firms of Drexel & Co., Drexel, Morgan & Co. and Drexel, Harjes & Co., Dec. 31, 1875.

2 Q. While you were a member of those firms did they deal as bankers in the bonds of the State of Tennessee?

A. We dealt in bonds generally, and that, of course, included the bonds of Tennessee.

7 3 Q. Had your New York and Philadelphia firms representatives in the Stock Exchanges of those cities?

A. Yes.

4 Q. Were you familiar with the manner in which Tennessee bonds were dealt in on those Stock Exchanges?

A. Yes.

5 Q. Did you ever know or hear of any Tennessee bonds being bought or sold as carrying a lien upon
8 any railroad in the State of Tennessee to which they might have been loaned?

A. No.

6 Q. Did your firm of Drexel, Winthrop & Co. in or about 1870 become the purchasers of any of the substitution bonds issued by the Nashville and Decatur Railroad Company?

A. We became part purchasers to a large extent

in company with R. T. Wilson & Co., A. Iselin & Co., and the New York Guaranty and Indemnity Company of the bonds issued by the Nashville and Decatur Railroad Company at that time. The whole amount of the loan was $2,100,000, and we bought about $1,900,000.

7 Q. At the time that your firm became part purchasers of those bonds had you any knowledge of any claim of any holders of bonds issued by the State of Tennessee and loaned to the Nashville and Decatur Railroad Company, or to its predecessors, that they had any lien or claim upon the property of that Company or its predecessors?

A. No.

8 Q. Did your firm, in connection with the N. Y. Guaranty and Indemnity Co., issue the advertisement for the sale of those bonds now shown you?

A. Yes, sir, we did—a copy of which advertisement is as follows:

December 31, 1870.

FINANCIAL.

SEVEN PER CENT. FIRST MORTGAGE BONDS

OF THE

NASHVILLE AND DECATUR RAILROAD.

The mortgage is for $2,100,000, or only $17,500 per mile, on an old and completed road, showing an established business, from local traffic, mainly more than sufficient to pay its interest as it becomes due, with prospects of greatly enlarged receipts from new connections which are now in progress.

This mortgage was created for the sole purpose of paying a debt due to the State of Tennessee, on terms which would reduce the liability of the road about $600,000.

Of the bonds issued under said mortgage $200,000 are held in escrow to abide settlement of a claim of the United States; $300,000 have been purchased by the parties in interest, and the balance of $1,600,000 are offered for sale on favorable terms; the security, in the judgment of the undersigned, being such as to entitle them to perfect confidence.

DREXEL, WINTHROP & CO.,
18 Wall Street.

NEW YORK GUARANTY AND INDEMNITY CO.,
52 Broadway and Exchange Court.

13 9 Q. If the holder of any of the bonds of the State of Tennessee which had been loaned to the Nashville and Decatur R. R. Co. or its predecessors had asserted any lien or claim upon the property of that Company by virtue of those bonds, would you have made the purchase?

A. No, sir.

10 Q. Would you have issued that advertisement and given the bonds the endorsement of your firm if you had known of such a lien or claim being as-
14 serted?

A. No, sir.

11 Q. Those bonds were sold by the interested firms, or by some of them, to the public, were they not?

A. Yes.

12 Q. You and the other parties sold them to the public as first mortgage bonds, secured upon the property of the Nashville and Decatur R. R. Co., as stated in the advertisement issued by your firm
15 and the N. Y. Guaranty and Indemnity Co., did you not?

A. Yes, sir.

13 Q. Did you afterwards become yourself a purchaser of any of the substitution bonds of the Memphis and Charleston R. R. Co. issued under the purchase of the State lien?

A. Personally I subsequently bought $50,000 of the first mortgage bonds of the Memphis & Charleston R. R. Co., each of which bonds bears an en-
16 dorsement to the effect that the lien previously held by the State of Tenneesee against the road had been vested in trustees under an assignment from the State to be held as security for that issue of bonds.

14 Q. At what price did you buy those bonds and when?

A. To the best of my recollection at 90 to 95 and 17
subsequent to 1877.

15 Q. At the time of your purchase of those bonds had you any knowledge of any claim on the part of any holders of Tennessee State bonds loaned to that R. R. Co. or any other R. R. Co. in Tennessee that they had any lien or claim upon the property of that or any other R. R. Company by virtue of those bonds?

A. I say most emphatically, no; I would not have entertained the proposition for a moment if I 18
had known of any such claims.

16 Q. Are you still a holder of those Memphis and Charleston bonds?

A. I am.

Cross-examination by MR. ANDREWS:

17 x Q. Where did you reside at the times mentioned in your direct examination?

A. For part of the time I resided in Philadelphia, 19
but during these transactions I was in New York the major part of business hours, and in the summer of 1871 I came to New York to reside permanently.

18 x Q. Did you purchase $1,600,000 of those substitution bonds without getting any legal advice as to their title?

A. I did not know them under the name of "substitution bonds," but we bought about that amount in connection with other parties of the first mort- 20
gage bonds of the Nashville & Decatur Railroad. We took all the precautions we usually did in buying bonds for ourselves, and had we felt the necessity of having any legal assistance we would have called it in. I do not recollect whether we felt any such necessity or not or whether we took legal advice or not. In case we thought there was necessity for

legal advice we handed it to our regular attorney. Mr. Robert Winthrop of my firm would be more likely to know than I.

19 x Q. Who brought these securities first to your notice.

A. Mr. R. T. Wilson, so far as I recollect.

20 x Q. Did you not have frequent conversations with Mr. Wilson on the subject of these securities.

A. I recollect talking with Mr. Wilson about them after the issue of the advertisement after I came to New York. Mr. A. J. Drexel had more frequent conversations with Mr. Wilson previous to the purchase.

21 x Q. Did Mr. Wilson at any of the times mentioned in your direct examination exhibit to you the opinion of Judges Davies and Davis, to the effect that the Tennessee State Bonds were paramount liens upon the railroads to which they were issued, or speak to you of that opinion in any way.

A. No, sir; he never did. He could not have described them as first mortgage bonds had he done so.

22 x Q. Did you have any conversation with Mr. Iselin while the bonds were being sold.

A. Yes.

23 x Q. Did he exhibit or speak of that opinion to you?

A. No, sir; he did not.

24 x Q. Please produce a copy of any opinion which your firm received upon this subject?

A. I will if such a one ever existed or is now in existence.

Re-direct:

25 Q. Did not Mr. Donaldson, as Chairman or Mr. Williams, as Secretary of the Committee of Tennessee bondholders or any Tennessee bondholders ever exhibit to you any such opinion of Davies and Davis, or any opinion to that effect? 25

A. No.

26 Q. If any claims on behalf of Tennessee State bondholders that their bonds constituted a paramount lien upon the property of the railroad company to which they were loaned had been communicated to your brother Anthony J. Drexel, or to your partner Mr. Winthrop, would they in the usual course of business have communicated that fact to you before the tranaction was consummated? 26

A. Yes.

Re-Cross:

27 x Q. Could you not have obtained a printed copy of Davies and Davis' opinion had you sought for it? 27

A. I neither knew then nor do I know now that such an opinion existed. I never heard of it till within a week.

JOS. W. DREXEL.

Subscribed and affirmed before me, this 1st day of March, A. D. 1880.

WILLIAM H. DELANCEY, 28
Special Examiner.

29 I, WILLIAM H. DELANCEY, Special Examiner, duly appointed by the Circuit Court of the United States for the Western District of Tennessee, to take the testimony and proofs of both parties in the above-entitled suit, in the city of New York, do hereby certify that on the several days named in the deposition hereto annexed, I was attended at my office, No. 52 Broadway, in the city of New York, by the counsel and witness aforesaid. That the said witness was duly affirmed and cautioned, in
30 the above-entitled suit and exinamed, and the deposition was reduced to writing, and read to the witness, and by him subscribed in my presence.

Dated March 1st, 1880.

WILLIAM H. DELANCEY,
Special Examiner.

31

32

Deposition of B. O. White.

CIRCUIT COURT OF THE UNITED STATES,

WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement bonds of Tennessee issued to the MEMPHIS & CHARLESTON R. R. Co.,

vs.

THE MEMPHIS & CHARLESTON R. R. Co. *et al.*

1

2

Testimony and proofs for final hearing taken on the part of the respondents in the above-entitled suit, under and pursuant to the 67th Rule in Equity, as amended, before William H. DeLancey, Special Examiner, duly appointed herein.

3

NEW YORK, March 2, 1880.

Present—Mr. TWEED for respondents.
Mr. ANDREWS, for complainants.

(Deposition taken subject to all legal objections of both parties.)

4

B. O. WHITE, a witness produced on the part of the respondents, being duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says:

1 Q. What is your name, residence, occupation and age?

A. B. O. White; I reside on Staten Island; am Secretary of the N. Y. Stock Exchange, and am of full age.

2 Q. Are you a member of the N. Y. Stock Exchange, and how long have you been so?

A. I am and have been for a quarter of a century.

3 Q. Are you familiar with the method of buying and selling State bonds on the Exchange, and how long have you been so familiar?

A. I am and have been ever since I was a member, and also before while I was a clerk with bankers in the street as far back as 1849.

4 Q. State if you know how Tennessee State bonds were bought and sold on the Exchange and in the New York market?

A. They are sold as "Old Tennessees," "New Tennessees," and "New Series." Before the war they were sold as "Tennessee 6's" and "Tennessee 5's." I never heard of their being sold in any other way.

5 Q. Was any Tennessee six per cent. bond or Tennessee 5 per cent. bond a good delivery for purchases made in the regular way on the New York Stock Exchange of either class of these bonds from 1852 to the outbreak of the war?

A. All I can say is the same as the answer to the last question.

6 Q. When Tennessee State bonds are bought at the New York Stock Exchange can the purchaser know for what purpose the bonds he is purchasing were issued, whether to railroads or for building the Capitol, or for the Bank of Tennessee, or for turnpikes, or for any other purpose?

A. He cannot as called and dealt in in the market.

B. O. WHITE.

Subscribed and sworn to before me, this 10th day of March A. D. 1880. 9

WILLIAM H. DELANCEY,
Special Examiner.

I, WILLIAM H. DELANCEY, Special Examiner, duly appointed by the Circuit Court of the United States for the Western District of Tennessee, to take the testimony and proofs of both parties in the above-entitled suit, in the city of New York, do hereby certify that on the several days named in 10
the deposition hereto annexed I was attended at my office, No. 52 Broadway, New York City, by the counsel and witnesses aforesaid. That the said witness was duly cautioned and sworn in the above-entitled suit and examined and the deposition was reduced to writing and read to the witness, and by him subscribed in my presence.

Dated March 10th, 1880.

WILLIAM H. DELANCEY,
Special Examiner. 11

12

Deposition of Thomas Denny.

UNITED STATES CIRCUIT COURT,

WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement Bonds of Tennessee issued to the MEMPHIS & CHARLESTON R. R. Co. 1

vs.

THE MEMPHIS & CHARLESTON R. R. Co. *et al.* 2

Testimony and proofs for final hearing on the part of the respondents in the above-entitled suit, taken under and pursuant to the 67th Rule in Equity, as amended before William H. DeLancey, Special Examiner, duly appointed herein. 3

NEW YORK, March 8, 1880.

Present—MR. CHAS. H. TWEED, *for Respondents.*
MR. E. L. ANDREWS, *for Compl't's.*

THOMAS DENNY, a witness produced on the part of the respondents herein, being first duly cautioned and sworn in the above-entitled suit to testify the truth, the whole truth and nothing but the truth, deposes and says : 4

(Deposition taken subject to all legal objections of both parties.)

5 *Direct-examination* by Mr. TWEED:

1 Q. Please state your name, age, residence and occupation?

A. Thomas Denny; aged 46; I reside in New York City, and am a banker and broker.

2 Q. Are you a member of New York Stock Exchange?

A. I am.

3 Q. How long have you been a member of the
6 Stock Exchange?

A. Since 1858 or '59.

4 Q. Were you before that time also employed as clerk in the same business?

A. I was.

5 Q. During the period of your membership of the N. Y. Stock Exchange and your clerkship anterior thereto, have you been familiar with the manner of conducting transactions on the Exchange in Tennessee Bonds?

7 A. Yes.

6 Q. Please state how such dealings were conducted before the war, and into what classes Tennessee State Bonds were then divided?

A. They were bought and sold by open call at the Stock Exchange, and the classes into which they were divided were Tennessee 5s and Tennessee 6s.

7 Q. How were the contracts made between members of the Exchange in regard to those bonds entered into, and how were they recorded?

8 A. Contracts were made by the members between themselves orally, and such as they desired were recorded by the secretary on his books kept for that special purpose.

8 Q. Did those contracts specify the object for which the bonds dealt in were issued, or the distinctive numbers of the bonds to be delivered under the contracts?

A. The contracts did not state the object or num- 9
bers, but simply to the class, whether 6s or 5s.

9 Q. So that a person purchasing Tennessee 5s or Tennessee 6s, at the Stock Exchange, would not, at the time of making the purchase, nor until delivery was made under the contract, know the distinctive numbers of the bonds which he was to receive thereunder?

A. He would only know until delivery that he was to receive so many thousand dollars of 6s or 5s, without any other distinctive circumstances. No 10
distinction was made on account of the objects for which bonds were issued by the State.

10 Q. What change has taken place since the war in the classification at the Stock Exchange of Tennessee State Bonds?

A. Since the war the Tennessee 6s have been divided into Tennessee "olds," being the bonds issued before the war; Tennessee "new," being the bonds issued since the war, and Tennessee "new series," being the bonds issued for funding purposes. 11

11 Q. In other respects has the manner of dealing in these bonds at the Stock Exchange continued the same to the present time.

A. It continues the same except that the secretary's record is dispensed with, and in time contracts, written contracts, are exchanged between the members.

12 Q. In the oral dealings or the written contracts between the members is there any specification of the objects for which the bonds dealt in were issued 12
by the State, or the distinctive numbers of the bonds to be delivered?

A. There is not.

13 Q. So that a broker does not know until delivery is actually made what bonds of the classes "Old," "New" and "New Series" he will receive under his contract?

A. He knows the class, but neither numbers nor object for which the bond was issued.

14 Q. Did you ever know or hear of any contracts being made in the Exchange for the purchase or sale of Tennessee State bonds bearing any particular distinctive numbers, or issued for any particular purpose?

A. No such contracts were ever made on the Exchange.

15 Q. What proportion of the Tennessee State bonds which are bought and sold in New York are bought and sold in the New York Stock Exchange?

A. According to my knowledge they were almost exclusively bought and sold at the Stock Exchange.

16 Q. Did you ever hear of any Tennessee State bond being bought or sold in or out of the Stock Exchange as carrying a lien on any railroad in Tennessee to which the bond was loaned.

A. I never have.

17 Q. Have you dealt extensively in Tennessee State bonds since you have been a member of the Stock Exchange?

A. I have.

THOMAS DENNY,
30 Pine street,
New York.

Subscribed and sworn to before me,
this 8th day of March, 1880.

WILLIAM H. DELANCEY,
Special Examiner.

I, WILLIAM H. DELANCEY, Special Examiner, duly 17
appointed by the Circuit Court of the United States for the Western District of Tennessee, to take the testimony and proof of both parties in the above-entitled suit in the City of New York, do hereby certify that on the several days named in the deposition hereto annexed, I was attended at my office, No. 52 Broadway, New York City, by the counsel and witness aforesaid. That the said witness was duly cautioned and sworn in the above-entitled suit and examined, and the deposition was reduced to 18
writing and read to the witness and by him subscribed in my presence.

Dated 8th March, 1880.

WILLIAM H. DELANCEY,
Special Examiner.

19

20

Deposition of James P. Wallace.

1

CIRCUIT COURT OF THE UNITED STATES,

WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement Bonds of Tennessee, issued to the Memphis & Charleston R. R. Co.,

against

THE MEMPHIS & CHARLESTON R. R. Co. *et al.*

2

Testimony and proofs for final hearing on the part of the Respondents, taken under and pursuant to the 67th Rule in Equity, as amended, before Willian H. DeLancey, Special Examiner, duly appointed herein.

3

NEW YORK, March 9th, 1880.

4

Present—Mr. CHAS. H. TWEED, *for Respd'ts;*
Mr. E. L. ANDREWS, *for Compl'ts.*

JAMES P. WALLACE, a witness produced on the part of the respondents herein, being first duly

5 cautioned and sworn in the above-entitled suit, to testify the truth, the whole truth and nothing but the truth, deposes and says:

(Deposition taken subject to all legal objections of both parties.)

Direct Examination by Mr. TWEED:

1 Q. Please state your name, age, residence and occupation?

6 A. James P. Wallace; aged 63; I reside in Brooklyn; I am President of the N. Y. Guaranty and Indemnity Co.

2 Q. How long have you been President of that Company?

A. Since 1870 I think, previous to that I was Vice-President from the organization in 1865.

3 Q. What was the general character of the business carried on by the Guaranty and Indemnity Co.?

7 A. Loaning money on securities and merchandise.

4 Q. In the course of the dealings of that Company did it lend money to large amounts upon Tennessee State bonds?

A. We did so to large amounts and at various times extending through almost all the period of business from 1865 to 1875, when we withdrew from the business of making any loans.

5 Q. In the course of the dealings of the Guarantee & Indemnity Co. in Tennessee State bonds

8 was any discrimination ever made based upon the objects for which the bonds were issued by the State, whether for railroads, banks, turnpikes, the Capitol, Hermitage or the Agricultural Bureau, or did you ever inquire as to which of these objects any bonds presented to you were issued for?

A. After we commenced business, finding that the Tennessee bonds offered to us were of various

classes, I went to the Bond Committee of the Stock Exchange and to the Secretary of that Committee for information as to what bonds were a good delivery at the Stock Exchange. The information I obtained led me to consider all the old bonds, bonds issued before the war which were not mutilated by endorsements written upon them, or otherwise mutilated, were a good delivery without respect to the objects for which they had been issued, on a sale of "Old Bonds," and that all Tennessee State bonds issued after the war were a good delivery on a sale of "New bonds" without respect to the object for which they had been issued. And in our receiving Tennessee State bonds as collateral for loans we acted under that information, and we made no discrimination or enquiry in respect to the object for which the bonds had been issued.

6 Q. You have spoken of "endorsements" written upon certain old State bonds ; please state the facts in respect to such endorsements.

A. The endorsements were to the effect that the bond was the property of some person or corporation. Something like a notice to the public that the bond belonged to some particular person. I understood these endorsed bonds were not a good delivery even if there was a subsequent endorsement to bearer, and we therefore rejected them.

7 Q. Did the Guaranty and Indemnity Company, in or about 1870, become the purchasers of any of the substitution bonds issued by the Nashville & Decatur R. R. Co?

A. In December, 1870, the New York Guaranty and Indemnity Company jointly with Drexel, Winthrop & Co., A. Iselin & Co., and R. T. Wilson & Co., agreed to purchase about $1,600,000 of such bonds, participating in the purchase to the extent of one fourth each, and on the 3d of May, 1871, we

received our share of such bonds, and paid for them.

8 Q. At the time that your company became purchasers of these bonds had you any knowledge of any claim of any holders of bonds issued by the State of Tennessee, and loaned to the Nashville & Decatur R. R. Co., or its predecessors, that they had any lien or claim upon the property of that company or its predecessors?

A. We had not.

9 Q. Did your company, in connection with Drexel, Winthrop & Co., issue the advertisement for the sale of these bonds now shown you?

A. Yes, we did. It is as follows, and it appeared in the leading papers in New York and in a Brooklyn paper, and also a circular:

December 31, 1870.

FINANCIAL.

SEVEN PER CENT. FIRST MORTGAGE BONDS

OF THE

NASHVILLE AND DECATUR RAILROAD.

The mortgage is for $2,100,000, or only $17,500 per mile, on an old and completed road, showing an established business, from local traffic, mainly more than sufficient to pay its interest as it becomes due, with prospects of greatly enlarged receipts from new connections which are now in progress.

This mortgage was created for the sole purpose of paying a debt due to the State of Tennessee, on terms which would reduce the liability of the road about $600,000.

Of the bonds issued under said mortgage $200,000 are held in escrow to abide settlement of a claim of the United States; $300,000 have been purchased by the parties in interest, and the balance of $1,600,000 are offered for sale on favorable terms; the security, in the judgment of the undersigned, being such as to entitle them to perfect confidence.

DREXEL, WINTHROP & CO.,
18 Wall Street.
NEW YORK GUARANTY AND INDEMNITY CO.,
52 Broadway and Exchange Court.

10 Q. Was there endorsed upon those bonds a certificate of the Comptroller of the State of Tennessee in the form now shown to you? 17

A. Yes. This is the certificate:

"I certify that the Nashville & Decatur Rail-
"road Company has paid off the debt to the
"State of Tennessee, which was created by
"the loans of the bonds of said State, and
"for interest thereon, and that this bond is
"secured by a first mortgage, and is issued 18
"under authority of law, and takes the place
"of the lien which was held by the State.

"ED. R. PENNEBAKER,
"*Comptroller of the State of Tennessee.*
"By P. C. CALHOUN, *Prest. Agent.*"

11 Q. If the holders of any of the bonds of the State of Tennessee which had been loaned to the Nashville & Decatur R. R. Co., or its predecessors had asserted any lien or claim upon the property of that company by virtue of those bonds, would you have made the purchase? 19

A. If we had known of any such claim, we certainly would not, nor would we have recommended them nor inserted the advertisement produced.

12 Q. Did any of the directors, or persons connected with your company become purchasers of any of those bonds?

A. Yes, sir. I took some myself, and I think Wm. A. Low, S. D. Babcock, Wm. Allen Butler and Geo. W. Parson purchased some of them. 20

JAMES P. WALLACE.

Subscribed and sworn to before me this 9th day of March, A.D. 1880.

WILLIAM H. DELANCEY,
Special Examiner

21 I, WILLIAM H. DELANCEY, special examiner, duly appointed by the Circuit Court of the United States for the Western District of Tennessee, to take the testimony and proofs of both parties in the above-entitled suit, in the city of New York, do hereby certify that on the several days named in the deposition hereto annexed, I was attended at my office, No. 52 Broadway, in the city of New York, by the counsel and witness aforesaid. That the said witness was duly cautioned and sworn in the above-en-
22 titled suit and examined, and the deposition was reduced to writing, and read to the witness, and by him subscribed in my presence.

Dated March 9th, 1880.

WILLIAM H. DELANCEY,
Special Examiner.

23

24

1

Deposition of James A. Roosevelt.

CIRCUIT COURT OF THE UNITED STATES,

WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement bonds of Tennessee, issued to the Memphis & Charleston R. R. Co.

vs.

THE MEMPHIS & CHARLESTON R. R. Co. *et al.*

2

3

Testimony and proofs for final hearing on the part of the respondents, taken under and pursuant to the 67th Rule in Equity, as amended; taken before WILLIAM H. DELANCEY, Special Examiner duly appointed herein.

NEW YORK, March 12, 1880.

4

Present—Mr. CHAS. H. TWEED, for respondents.
Mr. E. L. ANDREWS, for complainants.

5 JAMES A. ROOSEVELT, a witness produced upon the part of the respondents in the above-entitled suit being first duly cautioned and sworn therein, to testify the truth the whole truth, and nothing but the truth, deposes and says :

(Deposition taken subject to all legal objections of both parties.)

Direct-examination :

6 1 Q. Please state your name, age, residence and occupation ?

A. James A. Roosevelt ; fifty-four years of age ; reside in New York city, and am a banker.

2 Q. How long have you been acquainted with the markets of New York in respect of the securities dealt in, in such markets ?

A. More than thirty years; during which time I have been carrying on the business of merchant and banker in New York.

7 3 Q. After the settlement made by the East Tennessee, Va. & Ga. R. R. Co. with respect to its indebtedness to the State of Tennessee, did you become the purchaser for yourself or others of any of the substitution first mortgage bonds of that company which were issued upon such settlement ?

A. Yes ; I did both individually, and for other parties for whom I had money to invest.

4 Q. After that settlement was made, did you become a purchaser of any of the shares of stock of the

8 East Tennessee, Va. & Ga. R. R. Co.?

A. I did, in connection with my brother, to the extent of $78,000.

5 Q. At the time of the purchase of those bonds or that stock had you ever heard of any claim being asserted by any of the holders of bonds of the State of Tennessee that these bonds were liens upon the roads to which the bonds were loaned by the State ?

A. With regard to the stock I had no information 9
of any such claim whatever; with regard to the great majority of the bonds I can say the same thing; I may have purchased recently a few bonds since I heard of this suit.

6 Q. Did you also become the purchaser of any of the first mortgage substitution bonds of the Memphis & Charleston R. R. Co., which were secured by the transfer of the State lien to A. Iselin & Co., and by them to the Farmer's Loan & Trust Co.?

A. I have purchased and hold a large number of 10
those bonds at the present time.

7 Q. Did you consider the transfer of the State lien as security for those Memphis & Charleston bonds a material element in respect of the value of those bonds?

A. Most assuredly.

8 Q. At the time when you purchased those bonds had you heard of any claim being asserted that any of the holders of the bonds of the State of Tennessee loaned to Railroads had any lien upon those 11
Railroads to which those bonds were loaned?

A. I never heard of any such claim being made.

9 Q. Did you ever hear of any of the bonds of the State of Tennessee being bought or sold as carrying any lien in favor of the bondholders upon the Railroads to which those bonds had been loaned?

A. No; I never had heard of any sales being made in which it was set up that there was any claim upon the railroads; I never heard of any such claim being made until after the commencement of this suit. 12

J. A. ROOSEVELT.

Subscribed and sworn to before me, this 12th day March, A.D. 1880.

WILLIAM H. DELANCEY,
Special Examiner.

13 I, WILLIAM H. DELANCEY, special examiner, duly appointed by the Circuit Court of the United States for the Western District of Tennessee, to take the testimony and proofs of both parties in the above-entitled suit, in the city of New York, do hereby certify that on the several days named in the deposition hereto annexed, I was attended at my office, No. 52 Broadway, in the city of New York, by the counsel and witness aforesaid. That the said witness was duly cautioned and sworn in the above-en-
14 titled suit and examined, and the deposition was reduced to writing, and read to the witness, and by him subscribed in my presence.

Dated April 3d, 1880.

WILLIAM H. DELANCEY,
Special Examiner.

15

16

Deposition of J. G. M. Ramsey.

Caption same as in Craig's and Jackson. 1

I was eighty-two years old on the 25th day of March last, and have resided all my life in or near Knoxville, Tenn., except when I have been absent temporarily. I have been a practicing physician during my life; I have been president of several different banks, and among others of "The Tennessee State Bank", at Knoxville. I was appointed by Governor Trousdale, in 1851, the agent of the State of Tennessee, to receive for the East Tennessee and 2
Georgia Railroad Company, three hundred and fifty (350) State of Tennessee coupon bonds, payable to blank or bearer, bearing six per cent interest, evidenced by coupons attached to the bonds, payable semi-annually in the City of New York; each bond was for $1,000, and had forty years to run to maturity. The duties of my agency were to sell the bonds, and apply the proceeds to the ironing and equipping of the road, as required by the Act. I was appointed to and did act as the agent of the 3
State of Tennessee and not of the railroad company. I went in person to Baltimore, Philadelphia, Boston and New York, to sell these bonds,—and sold in the New York market two hundred and forty-seven of them for cash, at rates varying from 103¼ to 104½, that is from 3¼ per cent to 4½ above par. I sold these bonds as straight Tennessee State Bonds, and procured the favorable price which I obtained for them by representing to them and showing from the Comptroller's report, that the indebtedness of the 4
State of Tennessee, amounting to only three mil-

lions of dollars ($3,000,000) one half of which was an interest paying stock ; that is the State's stock in the Bank of Tennessee and the Union Bank, and by representing also the resources of the State, the extent of its territory, the fertility of its soil, and the character of its people, and its climate, its agricultural products, and its mineral resources. I never mentioned or represented that the bonds were secured by any statutory lien on the property of the road in favor of the bondholder, nor did any broker ever ask me any such question or make any such claim. I afterwards sold the balance of 103 bonds at par. These bonds were all sold prior to the year 1852, and during the year 1851. The 103 bonds which were last sold were sold at par or a little above. The Bank of Tennessee, of a branch of which at Knoxville I was President, was the fiscal agent of the State, and belonged wholly to the State, received revenues and made its disbursements in the payment of its judicial and executive officers, and in the payment of its coupons on its bonds. The proceeds of the bonds I personally disbursed. I have no connection with or interest in the railroads of the State of Tennessee, their stocks or their bonds.

And further deponent saith not.

(Signed) J. G. M. RAMSEY.

(Excepted to for irrelevancy.)

Deposition of Samuel Tate.

CALVIN AMORY STEVENS

vs.

THE MEMPHIS AND CHARLESTON RAILROAD COMPANY.

Deposition of Samuel Tate, taken at Knoxville, Tenn., Sept. 25th, 1879:

I reside in the City of Little Rock, Arkansas, and am sixty-two years old. I was born in Tennessee, and was a citizen of Tennessee for about sixty years. I have no connection with or interest in the Memphis and Charleston Railroad Company, or any other railroad in the State, nor in their bonds or securities, nor in the State bonds.

I was connected with the Memphis and Charleston Railroad from the year 1852, till the year 1868, the first two and a half years as Secretary and Treaurer, and balance of the time as President; in all something over sixteen years. I was connected with the road from the time of its first active operations, in the collection of its stock and in the commencement of its grading and construction.

I was during the whole of my official connection with the Board almost the exclusive active financial and constructing agent for the Western Division of the road, that being the only portion which lies in Tennessee.

The purpose, as I understood it at the time, of the railroad men of Tennessee, in shaping the

5 passage of the General Internal Improvement Act of 1851–2 was to get it in the most available shape, to iron and equip their road ; and the State's credit was much better than any outside company's ; even with the State's endorsement they preferred and so shaped the legislation as to get the straight State Bonds issued in order to get more money for it ; besides this they preferred making their liabilities and dealings with the State alone, in paying their interest and sinking funds, having their entire deal-
6 ings with the State of Tennessee ; and supposed they had accomplished this in the passage of the Act of 1851–2.

Experience had shown that the bonds of companies endorsed by the State never obtained as high a price in the market as straight State Bonds.

The first bonds received by the Memphis and Charleston Railroad, under the Act of 1851-2, were sold as straight Tennessee State Bonds, and brought 108 cents in the market.

7 A very large proportion of the bonds received by the road under said Act and amendment were received and sold by me as the Financial Agent of the company, and all of them during my connection with the road in full consultation with me.

In the negotiation of these bonds with capitalists in the City of Charleston, New York and elsewhere, I had many consultations and conversations with them in relation to the character of these bonds, in all of which I represented them as straight State
8 Bonds, and that the law made the State alone liable for them to the holder, which position was accepted and acquiesced in by every man whom I ever sold a bond to.

In keeping my accounts with the State of Tennessee in relation to the bonds issued to the Company by the State, I credited the State with the amounts of the bonds without regard to preserving

on the books the numbers of said bonds, as I re- 9
garded our liability as alone to the State for the amounts of the bonds, without regard to any specific bonds. When any amount was paid to the State on interest and sinking fund it was charged to the State as that much money, without regard to its being paid on any particular bond.

I did superintend the payment of the semi-annual interest to the State on the amount of bonds issued to said company. It was directed to be paid or paid so as to be applied to the coupons attached to 10
the identical bonds issued to our company, but it was simply directed to be paid, and was paid, as so much interest, due from our company to the State on the amount of bonds issued to us, believing and construing our obligation under the law to be to the State alone.

All the bonds issued to our company were payable to blank or bearer, and were passed to the purchasers of them without any endorsement or notation upon them to identify them as the bonds is- 11
sued to our company by the State, passing them to the purchaser as I would a bank note, believing that our company had no more liability upon them than it would have upon a bank note passed to such purchaser; the similarity between said bonds and a bank note consists in this, that they were both payable to blank or bearer, passed by delivery and were both numbered.

The system of numbering bonds and bank notes is adopted by the State or institution issuing them 12
for the purpose of identity, and for detecting spurious and over-issues.

The company ceased to pay interest due the State during most of the war, and for more than two years after the close of the war—during which time no coupon was ever presented to or payment demanded from the company by any holder of any

such past due coupon, but payment was demanded by the State of Tennessee for all the past interest due the State.

The Memphis and Charleston Railroad received under the act of 1852, and amendments, $1,100,000, and made an additional indebtedness to the State of about $400,000 for accrued interest during the war.

Under an act of 1875 or '6, an additional loan was made of about $300,000, making a total indebtedness of about $1,800,000.

Every bond received by our company from the State that was negotiated were sold and the proceeds nsed in strict conformity with the law, during my official connection with the road.

As to the act of 10th of March, 1869, I know nothing, but looking as I did, with many other railroad men of Tennessee, to the very large indebtedness of the State, near forty-three millions of dollars, and its depreciated credit, then down to 41 cents, and the large indebtedness of the railroads to the State, and their dilapidated condition after the war, we were anxious to devise some plan to relieve the State and the railroad companies, to prevent the roads going into the hands of political receivers, and being run down and destroyed without benefit either to the companies or the State, under the large sinking fund soon to be collected, with their other pressing liabilities, we devised the plan contained in the law of 20th July, 1870, as the only one to avoid bankruptcy of both railroads and State.

The wisdom of which law was proven by reducing the State's debt over $20,000,000, and to an amount capable of being easily handled.

The demand for State bonds produced by this law was such as to increase their value from 41 to over 65 cents within forty-five days from its passage,

thereby adding over nine millions of dollars to the value of State bonds then out.

As to the amount of capital furnished by the stockholders of this road for its construction and equipment, upon which the State's credit was based, the original stockholders paid in as stock at par about $2,500,000. They sold their own first mortgage bonds on their Alabama & Miss. Division, $1,600,000, at 87c., $1,392,000. They used in its construction and equipment of their net earnings during its construction for construction and equipment purposes about $2,800,000, making a total of $6,692,000, upon which their orginal State loan was about $1,100,000. Loan to fund interest about $400,000. Additional loan after the war about $300,000, making a total Tennessee Loan of about $1,800,000.

After the war the road was found to be one of the worst injured roads in the South, having been at different times lost and won, and in the possession of both armies alternately, and each surrender of it was preceded by its destruction by the retreating army as far as it was possible, and at the close of the war not a permanent bridge or trestle was left on it, and but few buildings, and for 136 miles the ties all burnt or destroyed, and most of the rails burned and twisted around trees and telegraph poles, so as to require almost a new construction and new equipment; for this purpose the company spent over two and a quarter millions of dollars of the stockholders' means and credit, putting the road and its equipment in fine order, and purchaseing of the Government of the United States over $600,000 worth of equipments and material, for which they paid the Government the *cash*.

My impression is that all the bonds issued to our company before the war were sold promptly, for the reason that they brought a good price, but

the bonds issued after the war were not sold promptly, but were retained by the company, and used as collaterals for loans, because it was thought that the company could better undertake to pay the interest on money borrowed than to stand the discount on the bonds, which would have been necessary in selling them, and they were so retained by the company as long as I was officially connected with the road, as I recollect.

In regard to any means used to procure legislation in Tennessee for the benefit of the railroads, I can say that I never made an improper proposal to any member of any legislative body whatever, nor do I know any one else doing so.

I know of no holder of any Tennessee State Bond issued under the General Internal Improvement Act of Tennessee, preserving any evidence of the particular road to which such bond was issued; but I do know the fact there was no difference in the price of said bonds in the open market in New York or elsewhere, whether they were issued to solvent or insolvent roads. And further this deponent sayeth not.

SAM TATE.

Deposition of R. C. Jackson.

THE UNITED STATES OF AMERICA, *Eastern District of Tennessee*, } ss.:

Be it remembered, that, on the 30th day of August, 1879, before me, Clerk of the United States Circuit Court for the Eastern District of Tennessee, at my office, in the city of Knoxville, within said district and the Sixth Circuit, was produced, and personally came, R. C. JACKSON, witness on the part and behalf of the defendants in a certain suit now depending and undetermined in the Circuit Court of the United States for the Western District of Tennessee, wherein Calvin Amory Stevens *et al.*, on behalf of the holders of bonds issued to the Memphis & Charleston R. R. Company, Complainant, and the Memphis & Charleston R. R. Company and the East Tennessee & Virginia & Ga. R. R. Company, Defendant, to depose and the truth to say in said suit; and, thereupon, the said R. C. JACKSON, being of lawful age and sound mind, being by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, touching the matters in controversy in said suit, did answer to the interrogatories and cross-interrogatories propounded to him, depose and say as follows:

I am 69 years of age, will be 70 next month, and I live in Knox County, in the suburbs of Knoxville; have been living here between nine and ten years; previous to that time I lived forty-two years in Athens, McMinn Co., Tennessee, and previous to that time in Knox County, Tenn.

5 I am banking at present; have been since 1872—December; have been president, and am now cashier, of the East Tenn. National Bank; I was connected with the East Tenn. & Ga. Railroad from February or March, 1849—first, as secy. and treasurer, then as secy. and treasurer and supt. of transportation, then as general supt.—until Sept. or Oct., 1863. In the summer or fall of 1875, when the road was surrendered to the government, I was made vice-president; some time after, the time I do not exactly
6 remember, I was made general supt. of the E. T. & Ga. and E. T. & Va. Railroad Companies; after the consolidation of these two roads, which happened prior to 1870, I acted as general superintendent until the fall of 1871. As agent of the railroad company I did receive bonds of the State loaned to the E. T. & Georgia R. R. Company, for building the Chattanooga and Cleveland branch.

This occurred in 1858 or 1859. I sold State bonds lent to this company frequently from 1853 to 1859,
7 and probably to 1860. I never sold any under par, and do not recollect of ever selling any at a premium, unless it was upon getting money advanced without interest upon a promise to deliver bonds to the amount of the loans at fixed future date, which I did in one or two instances which I recollect, and probably several. In selling such bonds I represented them as straight Tennessee State bonds, resting on the faith and credit of the State alone for their payment, and I never said or represented
8 that there was any statutory lien on the property of the railroad in favor of the holder or to secure the bonds. No purchaser ever claimed or intimated to me that any other person was liable for the redemption of the bonds but the State. All the bonds I sold I negotiated or sold in person, and not through a broker or banker. Within my knowledge, in

negotiating the bonds, no representations were 9
made by the company or any of their authorized agents to the effect that the bonds were liens upon the road, in favor of the holders of the bonds, and I never heard of such a thing until within the last two or three years.

All the State bonds I received during the years 1858 and 1859, all that I sold as above stated from 1853 to 1859 or 1860 were coupon bonds of the State of Tennessee, payable to blank or bearer. No system of marking or endorsing these bonds was 10
adopted or resorted to by me or the company, as I know of, as a means of identifying these bonds as the bonds loaned by the State to the company. My recollection of our method of keeping the account is that when we disposed of a State of Tennessee bond we credited State bonds and charged cash. I have no recollection of ever seeing any difference in the quotation between Tennessee State bonds previous to the war, and I looked to the quotations when I was selling State bonds (I mean Ten- 11
nessee six per cent. State bonds—the five per cents. were, of course, a little lower) in price. Since the war I have not particularly noticed the price of State bonds, but think probably there is a difference between what are called the old and new series. When I speak of quotation, I mean the New York quotations of market price. My recollection is that the interest account with the State was kept with the general interest account, and showed only the amount of interest due the State 12
semi-annually and its payment. We were required to pay the interest fifteen days before the first of January and the first of July of each year; we uniformly paid it to the Bank of Tennessee as the fiscal agent of the State, and the bank gave us a receipt each time as and for the interest so paid to the

13 State. We usually paid the interest in currency; ssmetimes we paid it in currency and coupons. I mean in any coupons then due or overdue of any six per cent. bonds of the State of Tennessee.

We never were required by the State authorities to limit ourselves to, or pay in coupons of, the identical bonds issued to our company, and never attempted to do so, nor to keep any accounts looking to that purpose. So too as to the sinking fund, we were never required to pay, and never made ex-
14 amination as to whether or not we were paying, in the identical State bonds issued to our company, or any other State bonds. In paying interest and Sinking Fund on endorsed bonds we paid the coupons and the bonds issued by the company and endorsed by the State. I never was present but once when the interest was paid to the bank, and this was in Chattanooga in 1862 or 1863; we were careful to ascertain that the bank's accounts showed the same amount of bonds as our books showed, so as
15 to show the true amount of interest due from our Company to the State; and we paid that amount in money, or in money and coupons as the interest due from the Company to the State on account of the debt due for the bonds loaned the Company by the State. When I said that the State would receive coupons due or past due, I meant to include the coupons which would fall due on the first days of January and July, we paying in December and June previous. In paying the interest we made no at-
16 tempt to designate to the bank that the interest so paid should be applied to the payment of any coupons, or applied in any way. We were directed to make our payment of interest to "The Bank of Tennessee," and when we got our receipt from the bank for the interest paid, we considered we had done everything necessary to be done. Not to

my knowledge, and I think I would have known of it if it were done, did either of the companies with which I was connected appoint anyone in Nashville, New York, Philadelphia or elsewhere to pay the identical coupons attached to the bonds issued to these companies by the State. The East Tennessee and Georgia R. R. Company paid its last interest in July, 1863, or the year before or after, and discontinued payment for several years, and neither during that period or since have I ever heard or known of any holder of the coupons attached to the bonds issued to this company, presenting and demanding payment of said coupons of said company. I am a director and stockholder of the E. T., Va. & Ga. R. R. Company, and in no other way connected with it. 17 18

The amount of my stock in the said E. T., Va. & Ga. R. R. Company is $10,000 or $11,000, and I have no other interest in it.

Complainants, by their solicitor, except to the whole of the foregoing deposition upon the ground that the questions and answers are wholly irrelevant to the issues raised by the pleadings, and are incompetent. 19

R. C. JACKSON.

T. S. WEBB,
Solicitor.

20

Deposition of R. C. Jackson

CIRCUIT COURT OF UNITED STATES,

EASTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS *et al.*, etc.,

vs.

THE EAST TENN., VA. & GA. RAILROAD COMPANY *et al.*

Deposition of R. C. Jackson on behalf of defendants. Filed March 9th, 1880.

I was connected with the East Tennessee and Georgia Railroad from February or March, 1849; first as Secretary and Treasurer, then as Secretary and Treasurer and Superintendent of Transportation, then as General Superintendent until September or October, 1863.

In the summer or fall of 1865, when the road was surrendered by the government, I was made Vice-President. Some time after, the time I do not exactly remember, I was made General Superintendent of the East Tennessee and Georgia and the East Tennessee and Virginia Railroad Companies. After the consolidation of these two roads, which happened prior to 1870, I acted as General Superintendent until the fall of 1871.

5 In the summer or fall of 1865, when the road was surrendered by the government to the companies with which I was connected as aforesaid, the rolling stock, the cross-ties, the iron rails the road bed, some of the bridges, the depots, and the property generally of the companies was in a dilapidated condition. The roads had been in the possession of the government, when surrendered, since the fall of 1863.

The section of country through which said roads
6 run had been, at one time or another, overrun by the contending armies during the war; and the property that the government took from the roads, such as we got back, was very much depreciated in value, and badly worn, and a great deal of it was totally lost and destroyed.

It cost the companies large sums of money, after they obtained repossession of their property, to put the roads in what the officers considered safe running order—not a perfect condition—by reconstruc-
7 tion and repairing, which had not been fully accomplished when I left the road in the summer or fall of 1871.

After the companies got possession of the roads, they expended as much as they possibly could out of their earnings, in placing the roads in proper working order.

From the year 1863 until the year 1866, the East Tennessee and Georgia Railroad Company was in default of its interest on company bonds. In 1866
8 they issued a bond maturing in ten years, funding that interest.

At the time the Government turned the property over to the company they took an inventory of all the property furnished by them, in the shape of rolling stock, wood, ties, &c., and placed a valuation on it, and without at that time allowing the company any credit for what they (the Government) had lost, used or destroyed.

For several years this claim of the Government was in controversy, and was finally adjusted by the company giving the Government their bonds for about one hundred and ninety thousand dollars ($190,000), bearing four per cent. interest.

I do not remember when the companies resumed payment of the interest due the State after the war.

During my connection with the companies, after the war, my recollection is, that, in consequence of the expenditures which had to be made in repairing the roads, no dividend was declared; and during that time we spent all the money we had to spend in improving the condition of the road and equipments, and would have spent more if we had had it.

It appears from the report of the Treasurer of the consolidated roads, the East Tennessee and Georgia and the East Tennessee and Virginia railroad companies, that the bonded indebtedness of the company at that time was four million one hundred and ninety-one thousand and nine hundred dollars.

Since I severed my connection with the company several dividends on stock have been declared.

R. C. JACKSON.

Subscribed and and sworn to before me, this 9th day of March, 1880.

A. R. HUMES,
Clerk.

13 **Deposition of Jno. L. Moses.**

CIRCUIT COURT UNITED STATES,

EASTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS, *Ad. &c.*,

vs.

14 THE KNOXVILLE & KENTUCKY RAILROAD COMPANY *et al.*

Deposition of John L. Moses, in behalf of defendants, filed March 5, 1880.

I am secretary, treasurer and superintendent of the Knoxville & Ohio Railroad Company.

15 I have been secretary and treasurer during the existence of said Company, and superintendent during most of the time.

I was secretary and treasurer of the Knoxville & Kentucky Railroad Company from the 1st of January, 1868, until the purchase of the Road by the new Company in October, 1871, at which time the purchasers of the road took possession. The said purchasers were W. B. Johnston, C. A. Nutting, Joseph E. Brown, Alfred Austell and C. M. McGhee.

16 They took possession under a purchase from Commissioners of the State of Tennessee, which sale and purchase were confirmed by decrees of the Chancery Court at Nashville, and they delivered possession over to the Knoxville & Ohio Railroad Company.

The possession of the road and all its property by the purchasers thereof and by the said Knoxville & Ohio Railroad Company since its purchase in 1871,

has been peaceful, continuous and adverse to all other parties, and free from any lien of any kind, except for purchase money due the State of Tennessee from W. B. Johnston and others. The purchase money paid by W. B. Johnston and others to the State of Tennessee is now represented by the bonds issued by the Knoxville & Ohio Railroad Company since the organization of that Company. 17

JNO. L. MOSES.

Subscribed and sworn to before me this 5th day of March, 1880. 18

A. R. HUMES,
Clerk.

Deposition of James B. Hoxsie.

THE UNITED STATES CIRCUIT COURT,

EASTERN DISTRICT OF TENNESSEE. 19

C. A. STEVENS, *&c., &c.*,

vs.

THE EAST TENN., VIRGINIA & GEORGIA RAILROAD COMPANY.

Filed March 10th, 1880. 20

I was superintendent of the East Tennessee & Virginia Railroad from 1865, at the time the road was surrendered to the Company by the Government till the year 1869, when the East Tennessee & Virginia, and the East Tennessee & Georgia Railroad Companies were consolidated.

21 I was also connected with the East Tennessee & Virginia Railroad, in different capacities, from the year 1858 till 1864. During all the time I was connected with said road I was acquainted with the general physical condition of the road and its property.

When I was first connected with the road, in 1858, it was new, and in good condition, but when the Company regained possession of the road from the Government, in 1865, it was in bad condition, the
22 cross-ties were rotten and in bad condition; rails were badly worn, chairs were broken and many of them lost; many of the bridges had been burnt, and trestles substituted in place of them, which had to be replaced by permanent bridges; the water tanks and depots all had to have extensive repairs; a great deal of the rolling stock had been destroyed and that which had been turned back to the Company by the Government was in a very bad condition, and needed heavy repairs; the supplies of
23 wood which were on hand when the Government took the road, had all been consumed; the general condition of all the property of the Company was bad. The Government was in possession of the road from the first of September, 1863, till August, 1865.

The section of country through which the road run was at different times during the war overrun by the contending armies, parts of the road first in possession of one and then of the other, in consequence of which state of affairs the property
24 of the road was very much injured, the water tanks, depots and bridges being destroyed by one army to prevent the other from using them.

At the time I left the road in 1869, the road and its rolling stock had not been restored to a safe physical condition.

During all the time I was connected with the road between 1865 and 1869 inclusive, all the earnings

of the road went towards its improvement, and that of the rolling stock, in order to put it in a proper condition.

In consequence of the bad condition of the road and rolling stock, resulting from the before mentioned facts, the profitableness of the business of the road was considerably lessened because of the frequency of accidents, and we could have done the same amount of business at less expense, had it not been for the bad condition of the road and rolling stock.

J. B. HOXSIE.

Subscribed and sworn to before me this 10th day of March, 1880.

A. R. HUMES,
Clerk.

29 **Deposition of Wm. J. Taylor.**

UNITED STATES OF AMERICA,
EASTERN DISTRICT OF TENNESSEE,
U. S. CIRCUIT COURT.

CALVIN AMORY STEVENS *et al.*, &c.,

vs.

30 THE CINCINNATI, CUMBERLAND GAP and CHARLESTON R. R. COMPANY, *et al.*

On behalf of Defendants. Filed March 12, 1880.

I reside at Morristown, Tennessee, and my occupation is that of conductor on the Cincinnati, Cumberland Gap & Charleston Railroad. I have been conductor on said road since March, 1870, up
31 to the present time.

The East Tennessee, Virginia & Georgia Railroad Company came into possession of the Cincinnati, Cumberland Gap & Charleston Railroad November 1st, 1871, and have had peaceable, continuous possession of said road ever since, claiming it as its own absolutely and adversely to all others by virtue of a sale made under a decree rendered by the Chancery Court of Nashville, Tennessee, in the case of the State of Tennessee *v.* the Edgefield and Ken-
32 tucky Railroad Company, *et als.* Said sale was made to C. M. McGhee and R. T. Wilson, and by them to the East Tennessee, Virginia and Georgia Railroad Company.

WM. J. TAYLOR.

Subscribed and sworn to before me, this 12th day of March, 1880.

A. R. HUMES,
Clerk.

Deposition of Columbus Powell.

CALVIN AMORY STEVENS

vs.

MEMPHIS and CHARLESTON R. R. Co., and others.

1

Taken Sept. 26th. 1879, at Knoxville.

I am about fifty years of age, and reside in Knoxville, Tennessee. I lived in New York City for 2
four years after the war, from 1865 to 1869. While living in New York City I was a member of the firm of C. Powell, Greene & Co., Bankers and Commission Merchants. My firm sold a large number of the bonds of the State of Tennessee 6 per cent. coupon bonds for account of the East Tennessee and Virginia, Rogersville and Jefferson, Knoxville and Kentucky, now Knoxville and Ohio, Knoxville and Charleston and Mississippi Central Railroad Companies; and in addition to said companies, we sold 3
bonds for individuals and bankers; said bonds were mainly sold in the Board of Brokers, through a broker to a member or members of that board; occasional sales were made to individuals privately. The mode of selling bonds through the Board of Brokers in New York, was and is as follows: whenever we had State bonds for sale on behalf of our customers, whether railroads, private individuals or bankers, we gave an order to our broker to sell Tennessee bonds, 6 per cent. coupon bonds payable to 4
bearer; we did not give him any representation

that the bonds were issued to railroads or for what purpose, nor did we ever give him numbers of the bonds; our broker would offer said bonds when Tennessee bonds was called on the list of stocks and bonds by the President of the Board, and receive such bids from other members of the board as he was willing to accept, reporting the sales to our office when we could deliver according to contract, as follows, if for cash, deliverable on the day of sale, if on time, deliverable on the day fixed in the contract, so that neither the broker who bought nor the person for whom he bought, ever knew any thing in regard to the bonds, except that they were Tennessee six per cent. bonds, did not even know their numbers, or for what purpose they were issued, nor did he even see the bonds until they were delivered in final consummation of the sale. Our broker who sold the bonds did not even know anything about them except that they were Tennessee 6 per cents. And the bonds although numbered as all Tennessee bonds were, had nothing on them to indicate or show for what purpose they were issued, or to what railroad, except that they specified under what act of the Legislature they were issued. I mean in brief, that the bonds were sold as straight Tennessee State bonds, and that there was no representation, claim or suggestion made by the seller or buyer that they carried any lien on the property of the railroad company in favor of the bondholders. Bonds were frequently interchanged and loaned between the railroads, so that I myself did not know to what railroad the bonds were issued which I was selling.

In all my New York experience, and I suppose I was one of the largest sellers of Tennessee bonds for account of railroads and others, I never once heard the question raised that the bondholders could look to, or had any lien upon the railroad property be-

longing to the company to which the bond was issued. Had frequent conversations with holders of old and new bonds, who would consult me about the payment of interest on the bonds by the State, and in all these conversations the point discussed was what the sense of the people of the State of Tennessee as to the payment of the interest on said bonds, and never heard any suggestion or allusion to a claim of a lien on the property of the railroad companies of the State in favor of the bond-holder. 9 10

I do not think that two millions of dollars is an overestimate, but rather an under estimate, of the amount of Tennessee State bonds we sold while in business in New York City. I mean Tennessee sixes. The bonds were issued to the railroad companies by the State just as they applied for them, taking up the number at the number last issued. There was no mode of classification as to numbers of bonds adopted by the State authorities in issuing them so as to identify and distinguish the bonds issued to railroads, or any particular railroad, from the bonds issued by the State for any other purpose than for the railroads. In other words, there was no set of numbers for each particular railroad, or for all the railroads, but there was one common series of numbers for all purposes; therefore it was impossible for an outsider, seller or broker in New York, to identify any Tennessee State bond coming to him there as a bond issued in favor of any railroad. 11

There was no difference in the price of Tennessee State bonds, as sold on the same day, either for the East Tenn. and Virginia Railroad, a road of 130 miles in length, solvent, completed, and with full connections, and the "Knoxville and Kentucky Railroad," 40 miles, and incomplete and without connections, "The Rogersville and Jefferson Railroad," 16 miles in length, and incomplete, and the 12

"Knoxville and Charleston Railroad," 16 miles in length and incomplete, the three latter all being insolvent; nor the Mississippi Central Railroad, complete and with full connections, running 250 miles across the State of Tennessee.

I have no connection with nor interest in any railroad of the State, nor their stocks or securities.

It was a well known fact that these short insolvent railroads received twice as many bonds from the State per mile as the solvent roads, and yet the bonds on the market sold at the same price, as my books will show; and I give the following illustrations of actual sales from my books: we sold through our broker, in the Board of Brokers in New York, on Sept. 20, 1866, $80,000 of Tennessee bonds at 71¾, 72¾, and 73, and we delivered in consummation of these sales bonds indiscriminately from the following roads, "E. T. & Va.," "Knoxville and Kentucky," and "Rogersville and Jefferson." This is only an illustration of what frequently occurred, and in one instance sold in the same manner $100,000, in which the bonds of the Mississippi Central Railroad were delivered in common with the bonds of the railroads above mentioned and at the same price.

The reason for the name of Old and New Tennessee sixes was on account of the old carrying with them five past due coupons, when the new sixes were placed on the call of the stock board; that custom was continued after the coupons were paid or funded by the State, when the difference in the market value of the old and new was reduced to a merely nominal difference.

All six per cent. State bonds issued prior to 1860, whether to build the Capitol, buy the Hermitage, pay for the State's stock in banks or turnpikes, or to railroads under the Improvement Acts, or for any other purpose, were called old Tennessee sixes.

and without regard to what they were issued for, was a good delivery in the New York market, and at the same price.

Before the war the bonds issued by the railroad companies of Tennessee, with a first mortgage lien on the property of the roads and endorsed by the State, did not bring as high a price in the market as straight State sixes issued to aid the railroads or other purely State purposes. The reason for this is that the credit of the State was so high as through her fiscal agent, the Bank of Tennessee, she promptly paid her interest every six months in New York City. No doubt or apprehension was either felt or expressed as to her ability and promptness to pay her interest; while in the vicissitudes of railroad projects there was always doubt, and no such confidence did or could exist, and notwithstanding the State endorsement, it was secondary and it was felt that in case of default on part of the railroads, the State would delay until the lien on the railroad property in favor of the bondholders was enforced and exhausted before she would discharge her secondary liability.

Wm. G. Swan and I, as directors and fiscal agents of the Knoxville and Kentucky Railroad, went to New York in 1860, and sold some $30,000 to $40,000 of the first State bonds issued to that company; we sold them through brokers on the public market as straight Tennessee bonds; no representations were made by us, nor any inquiries or questions raised as to there being any lien on the railroad in favor of the holders of the bonds sold by us. We never dreamed that such a fact would have enhanced or affected beneficially the market.

And further this deponent sayeth not.

COLUMBUS POWELL.

Deposition of John J. Craig.

THE UNITED STATES OF AMERICA, *Eastern District of Tennessee*, } ss :

Be it remembered, that on the 30th day of August, 1879, before me, Clerk of the United States Circuit Court for the Eastern District of Tennessee, at my office in the city of Knoxville, within said District, in the Sixth Circuit, was produced and personally came John J. Craig, witness on the part and behalf of the defendants, in a certain suit now depending and undetermined in the Circuit Court of the United States for the Western District of Tennessee, wherein Calvin Amory Stevens *et al.*, on behalf of the holders of bonds issued to the Memphis and Charleston Railroad Company, are complainants, and the Memphis and Charleston Railroad Company, and the East Tenn., Va. & Ga. Railroad Company are defendants, to depose and the truth to say in said suit.

And thereupon the said John J. Craig, being of lawful age and sound mind, being by me first cautioned and sworn to testify the truth, the whole truth and nothing but the truth, touching the matters in controversy in said suit, did, in answer to the interrogatories and cross-interrogatories propounded to him, depose and say as follows :

I reside at Canton, Miss., and am here temporarily until I can return in safety ; I reside about 200 miles from Memphis, Tenn.,and about 400 miles from Knoxville, Tenn.

I resided in New York City from 1865 to 1868, and from 1868 to 1877 in Knoxville,Tenn., and from

5 1877 to 1879 in Miss. ; I was a banker most of the time when in any business ; my house of Craig, Morton & Co., of New York, acted as agents of the Cincinnati, Cumberland Gap & Charleston Railway Company during the years of 1866 and 1867—the time may have embraced from 1865 to the latter part of 1868—and did negotiate the sale of State bonds issued to them by the State. As to the amount of said bonds so sold and negotiated by us, I do not think it was less than one hundred thousand dol-
6 lars nor more than three hundred thousand dollars. The time of selling said bonds was between the years 1865 and the latter part of 1868, as stated above, and the place of sale was Wall street, New York City. I am confident we sold said bonds at not less than 60 cents nor more than 80 cents ; they were coupon bonds of the State, payable to bearer ; I sold them as straight Tennessee State bonds, and did not represent them as having any lien on any railroad in favor of the bondholders. The question
7 was never mooted as to their being issued to any railroad at all. If it had been believed or represented that there was additional security of any kind it would probably have increased the value of the bonds, but they were sold wholly as State bonds, and their value rested wholly upon the faith of the State in paying them.

I resided in Knoxville about 20 years prior to 1865, and up to that date I was cashier of the Union Bank at Knoxville from the year 1853 to the close
8 of the war. During the time I served as such cashier my opportunities for knowing and learning the value of the bonds were good, as I often had occasion, both in my official and individual capacity, to handle the different series of State bonds, sometimes holding them as collateral for money loaned, and sometimes purchasing them for myself and

friends as investments. During the period I do not 9
recollect of ever having heard of such bonds having any mortgage lien on the railroads in favor of the bondholders. They were sold as straight State bonds. Prior to the war I do not think there was any difference in the market price or value of bonds belonging to the different series of State bonds issued. Since the war there has been a difference in the market price or value of old and new State bonds. By the old bonds I mean or understand those bonds issued previous to the war, and by the 10
new bonds those issued since the war, commencing with Brownlow's administration, but what the difference in price was I do not know; it varied from one to two per cent. The old bonds included the "Hermitage Bonds," "Capital Building Bonds," "Turnpike Stock Bonds," and also the bonds issued to the railroad previous to the war. I have not at this time any connection with or interest in the various railroads of the State, their stocks or securities. 11

The amount of bonds sold by us on account of the Cincinnati, Cumberland Gap and Charleston Railroad Company amounted, as before stated, to not less than one hundred thousand dollars, and may have been as much as five hundred thousand dollars, but it is a matter purely of personal recollection, and therefore not accurate.

Complainants by their solicitor except to the whole of the foregoing deposition, upon the ground 12
that the questions and answers are wholly irrelevant to the issues raised by the pleadings.

T. S. WEBB,
Sol'r, &c.

And further this deponent saith not.

JNO. J. CRAIG.

Deposition of Perez Dickinson.

Eastern District of Tennessee.

Be it remembered that on the 27th day of September, 1879, before me, A. R. Humes, Clerk of the United States Circuit Court, for the Eastern District of Tennessee, at my office in the City of Knoxville, within said District, and the Sixth Circuit, was produced and personally came Perez Dickinson, witness on the part and behalf of the defendants in a certain suit now pending and undetermined in the Circuit Court of the United States for the Western District of Tennessee, wherein Calvin Amory Stevens, *et al.*, on behalf of the holders of Internal Improvement bonds of Tennessee, issued to the Memphis & Charleston R. R. Co. are complainants, and the Memphis & Charleston Railroad Company and the East Tennessee, Virginia & Georgia Railroad Company are defendants, to depose and the truth to say in said suit.

And thereupon the said Perez Dickinson, being of lawful age and sound mind, being by me first cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, touching the matters in controversy in said suit, did, in answer to the interrogatories and cross interrogatories propounded to him, depose and say as follows:

I have been a resident citizen and merchant of Knoxville, Tennessee, for more than forty years.

On the reorganization of the East Tennessee and Virginia Railroad in 1865 or 1866, after the war, I

5 became, at the request of the then President, John R. Branner, a Director, and was associated with him for several years up to 1869 or 1870, in the effort to rehabilitate the road and put it into successful operation as a common carrier. We were frequently annoyed by the legislation of the State; and to obviate this difficulty and obstacle to the successful management and operations of the East Tennessee and Virginia Railroad Company, I advised Mr. Branner, as President of said Road, prior to
6 the passage of the Acts of 1869 and of 1870, to originate some plan and to adopt some measure by which we could get rid of all obligations and liability to the State, and become entirely independent of the State's assumed control in appointing directors, and other vexatious legislation, and to rid ourselves of our obligations to the State by purchasing in and paying over our liabilities to the State, and thus secure a wiser and more successful management and conduct of the railroad as a common
7 carrier.

And further sayeth not.

PEREZ DICKINSON.

8

Deposition of John M. Fleming.

THE UNITED STATES OF AMERICA, *Eastern District of Tennessee.* } ss.:

Be it remembered, that on the 26th day of September, 1879, before me, Clerk of the United States Circuit Court for the Eastern District of Tennessee, at my office, personally came JOHN M. FLEMING, witness on the part and behalf of the defendants in a certain suit now depending, and undetermined, in the Circuit Court of the United States for the Western district of Tennessee, wherein Calvin Amory Stevens, *et al.*, on the part of the holders of Internal Improvement bonds of Tennessee, issued to the Memphis & Charleston R. R. Co., are complainants, and the Memphis & Charleston Railroad Company *et al.* are defendants, to depose and the truth to say in said suit. And thereupon the said John M. Fleming, being of lawful age and sound mind, being by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, touching the matters in controversy in said suit, did, in answer to the interrogatories and cross-interrogatories propounded to him, depose and say as follows:

1*st Inter.* What is your place of residence, and how long have you resided here?

2*d Inter.* Have you any connection with or interest in any of the railroads of the State, their stocks or securities?

3*d Inter.* How long have you been a resident of the State, and what has been your occupation since you were 21?

4*th Inter.* Were you a member of the General

5 Assembly of the State of Tennessee during the years 1869 and '70, and what official position did you hold in that Assembly?

5th Inter. State the facts, reasons and public sentiments of the State which caused that General Assembly to pass the Act of January 20th, 1870, amendatory of the Act of 10th of March, 1869, enabling the railroads to retire their debts to the State and also the Act for the sales of delinquent roads at the suit of the State?

6 *6th Inter.* State whether any corrupt influences within your knowledge were used by the railroad companies, or their officials, or any of their agents to induce that legislation?

7th Inter. State who were appointed Commissioners of the State by the bills to foreclose the delinquent roads, and why were the three men elected who were?

8th Inter. State any other fact or facts which you may know which will throw light upon the inquiries 7 already propounded to you.

Answer to *Inter.* 1. I reside in Knoxville, and have lived here since May, 1855.

Ans. to 2d. None whatever.

Ans. to 3d. I was born in Tennessee, and with the exception of ten or twelve years during my boyhood, have lived within the State all my life. I am forty-six years of age. Since attaining my majority my occupation has been that of an editor and 8 lawyer; have been twice a member of the State Legislature, and for two years was State Superintendent of Public Instruction. For about twelve years, closing December, 1878, I was editor of a daily political paper in Knoxville.

Ans. to Inter. 4. I was a member of the General Assembly of the State of Tennessee for 1869–70, and a portion of 1871, and held the official position

of Chairman of the House Committee on Judiciary.

Ans. to Inter. 5. In answer to this interrogatory I can state in general terms and somewhat in detail "the facts and reasons" that influenced my own action as a member of the General Assembly, and, as I believe, the action of those of other members constituting a majority of the body with whom I co-operated in effecting the legislation referred to.

The General Assembly of 1869–70, when it met in October, 1869, found the State of Tennessee in a deplorable financial condition. The political and social condition of the State from the close of the war up to that time may be described as having been one of disorder. The people were much and widely divided in sentiment, and the majority, for political reasons, had been deprived of the right of suffrage by State Legislature enactments. Pending this state of affairs the Legislature had made very liberal appropriations to works of internal improvements (at the instance, it is proper to say, in many cases of the disfranchised element), so that on the first Monday in October, 1869, when the General Assembly met, it was found that our State debt, actual and contingent, had swollen to the appalling volume of about $40,000,000 to $42,000,000. The State Treasury was empty, the resources of the State for purposes of revenue were very much reduced, in consequence of the demoralization of our labor system and other causes, and the people were neither in a condition nor humor to submit to a heavy rate of taxation.

The State had made default in the payment of interest the previous July, and its bonds in consequence were much depreciated in the financial markets. The General Assembly found itself confronted with the alternative of providing for the payment of the interest on the debt, or of repudiating or indefinitely postponing it in whole or in

part. The idea of repudiation was not seriously entertained by the majority of the body, and yet it seemed utterly impracticable to provide for the interest upon the face of the debt as it then stood. To reduce the debt, therefore, to a manageable condition became a study. Upon investigation only about $120,000 of bonds were ascertained to have been illegally and fraudulently issued, and the payment of those were interdicted. The validity of the remainder of the debt was practically recognized, and the Legislature went to work to so take care of the debt as to preserve the honor of the State. An examination of the general situation disclosed the fact that a number of railroad companies to which liberal loans of bonds had been made had become hopelessly insolvent. They had ceased to pay interest on the loans, their roads were unfinished and in the hands of Receivers appointed by the Governor, under the terms of the General Internal Improvement Acts. These roads, instead of paying expenses, were a burden upon the State Treasury. The rolling stock was wearing out without hope of replenishment, and the roads themselves rapidly going to decay. I had, myself, for several months before my election advocated through my newspaper the sale of all the defaulting roads as a measure of good State economy, and I was the author of the original bill providing for their sale.

My recollection is that the original bill, which was by no means perfect, but only designed as the basis upon which to elaborate a more perfect bill, was drafted by me in my own room, and offered in the House, without consultation with any one. The original bill was referred to the Judiciary Committee, to which committee I presented a more elaborate bill as a substitute for the original, and my recollection is that the latter bill was reported by the committee in lieu of the original, and with some

amendments finally became a law. The Commis- 17
sioners appointed by the act, having selected their attorneys, undertook to proceed with their duties, but discovered, as they reported, that the law was insufficient, inasmuch as proper authority for proceeding in chancery for foreclosure had not been confirmed by the act. Thereupon a new bill, prepared, I believe, by the Commissioners and their attorneys, was presented and enacted, and under *that* law the defaulting roads were sold. The purpose of their sale, as before intimated, was to save 18
as much as possible of the State's failing securities and utilize them in the reduction of the bonded debt. Subsequently to the introduction of the bill above described, and before its passage, the bill was introduced, which became a law on the 20th of January, 1870, enabling the debtor railroads to retire their indebtedness by discharging it with bonds of a series. This act was designed to remove and did remove the restriction that had been placed upon the railroad companies by the proviso to the 19
act of 10th March, 1869, which restriction limited the payments by railroad companies, that had issued second mortgage bonds, to the same series of bonds to which the bonds belonged that had been issued to them. It was not considered that the bill (the act of July 20th, 1870) conferred any *new* rights or privileges upon the companies, but that it simply restored the privilege enjoyed under the Sinking Fund clause of the Internal Improvement Act of 1852, under which it was understood the 20
railroad companies had discharged their amount indebtedness for years in bonds of the State without regard to series. This principle had been recognized from the establishment of our Internal Improvement System, by both the Executive and Legislative departments of State, and the General Assembly of 1869-70, in passing the Act of January

2d, 1870, did not regard it as any innovation upon the long settled policy of the commonwealth in regard to such settlements. But a few years before, the State, with the concurrence of all departments of the Government (the Attorney-General having sanctioned the proceeding), had settled with the Louisville and Nashville Railroad Company, receiving bonds in payment without regard to series. And this settlement was made by virtue of the provisions of the Act of 1852 and amendments thereto, above referred to. This Act of Jan. 20th, was believed to be inherently just but there was another consideration moving the Legislature to its enactment. The called solvent roads that were expected to avail themselves of its provisions were in an embarrassed condition. They had but recently been restored from military possession to the possession of the companies. They were struggling for rehabilitation under very discouraging circumstances. There was a general desire for their resuscitation and re-establishment as permanent thoroughfares for our commerce, but it was apprehended that under the pressure of accumulated debt and impaired credit they would soon be compelled to suspend their payments to the State, be classified as defaulting roads, and pass into the hands of receivers, and ultimately be sacrificed at immense loss both to the State and the companies, and in their view of the case it was regarded as a measure of sound and healthful policy for all the interests involved to accept from the so-called solvent companies in discharge of their debts the bonds of the State, of any series, and to permit them to issue *pro tanto* their own first mortgage bonds, the two-fold object having the reduction of the debt of our State and the rehabilitation of our railroad system. These two measures, the bill to sell the defaulting railroads, and the bill to enable railroad companies to retire their debts, were re-

garded as kindred measures, and progressed almost 25
pari passu, though differing considerably in the date of final passage. The friends of one measure were generally the friends of the other, the purpose in the minds of the majority being to reduce the volume of the public debt to manageable proportions, and to marshal all available assets of the State for that purpose. As a result of the operation of the two measures the volume of the debt was reduced to about $20,000,000, a sum which, with judicious management, I think might have been car- 26
ried by the State with comparative ease. Such are the principal facts and reasons that influenced my own action, and, as I believe, controlled the action of the majority of the members of the General Assembly of 1869–70. In regard to the legislature referred to in the interrogatory as to the "public sentiments of the State" in reference to the two measures, I can only say that while they were pending they seemed to command almost universal approval. Their passage was certainly generally acqui- 27
esced in. It was not until after the refunding of the State debt in 1873, when there arose a somewhat clamorous outcry against the validity of portions of the public debt, that there was manifested any serious popular dissatisfaction with either of the measures referred to. Notwithstanding the investigation of a joint select committee, of which I was a member, had shown that in some cases there had been irregularities in the procurement of bonds from the State, the legality of their issuance and the val- 28
idity of the debt had not been seriously disputed until 1873, as before stated, nor had the propriety and wisdom of the legislature referred to until then become a subject of grave popular complaint. Such is my recollection.

Ans. to Inter. 6.—No such influences were used by any of said parties within my knowledge.

Ans. to Inter. 7.—The commissioners appointed by the Legislature to sell the defaulting railroads were Hon. R. J. McKinney, Hon. Archibald Wright and Hon. Francis B. Fogg. The first two named had been Judges of our Supreme Court of Tennessee, and the last named was a lawyer of advanced age and marked eminence. All three were conspicuous personages in the Commonwealth, in whose integrity the whole population had confidence. It was because of their ability and universally recognized incorruptibility that they were selected as commissioners by the General Assembly.

Ans. to Inter. 8.—I believe no other material and relevant fact occurs to me calculated to throw light upon the inquiries propounded to me.

And further deponent saith not.

(Signed) JNO. M. FLEMING.

Deposition of Charles J. McKinney.

THE UNITED STATES OF AMERICA, } ss.:
Eastern District of Tennessee. } 1

Be it remembered that on the 1st day of September, 1879, before me, Clerk of the United States Circuit Court for the Eastern district of Tennessee, at my office in the City of Knoxville, within said District, and the Sixth Circuit, was produced and personally came Charles J. McKinney, witness on 2
the part and behalf of the defendants in a certain suit now depending and undetermined in the Circuit Court of the United States for the Eastern District of Tennessee, wherein Calvin Amory Stevens, *et al.*, on behalf of the holders of bonds issued to the East Tennessee & Virginia R. R. Company, are complainants, and East Tennessee, Virginia and Georgia R. R. Co. are defendants, to depose and the truth to say in said suit. 3

And thereupon the said Charles J. McKinney, being of lawful age and sound mind, being by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, touching the matters in controversy in said suit, did, in answer to the interrogatories and cross-interrogatories propounded to him, depose and say as follows:

I am 66 years old; my residence is Rogersville, E. Tennessee, where I have lived all my life; I have 4
been a farmer for several years; I was a director of "The Rogersville and Jefferson Railroad Co." for many years before and up to the war, and when the railroad passed into the hands of the State, in the year 186 , I was appointed State Receiver and received from the State, as a loan to this road, under the General Improvement Act of 1852 and several subsequent amendments, thirty thousand dollars in

coupon bonds of the State of Tennessee, which I sent to , brokers and bankers, New York City, to sell for me. I gave them no instructions to represent these bonds as guaranteed or secured to the purchasers by any lien or mortgage on the railroad or its property, but simply instructed them to sell as Tennessee State Bonds. They did sell twenty-five (25) of them, and I appropriated the proceeds to the completion of the road and the injuries produced by the war. The remaining five (5) I returned to the State. While I was a director the Company received in the same way something near two hundred and fifty thousand of the same class of bonds from the State, which were disposed of in the same way, without any representations of any lien in favor of the bondholder. These bonds were all payable to blank or bearer, and were not endorsed by the Company.

We kept no account of the numbers of the bonds, and had no system of marking or endorsing to identify the bonds of the State loaned to us. In paying the semi-annual interest to the State, we paid it either in money or in money and coupons then due, and did not attempt, nor were we required to procure the coupons attached to the bonds loaned to us, with which to make payment of the interest. We just took a receipt for so much interest paid to the State.

After the war the Company was in default for the interest due the State for several years, and that was the reason the State took possession of the road, and neither during the period of such default, nor since, have I ever heard or known of a bondholder presenting to or demanding payment of a coupon from our Company, and I am sure I would have heard of it if such a thing had ever happened.

I am not connected with or interested in any of the railroads of Tennessee, or their stocks, or securities, and further sayeth not.

CHAS. J. McKINNEY.

UNITED STATES OF AMERICA, } ss.: 9
Eastern District of Tennessee. }

I, A. R. HUMES, Clerk of the United States Circuit Court for said District, do hereby certify that the foregoing deposition of Charles J. McKinney was taken by and before me, as stated in the caption thereof, on the first day of September, 1879, and was, when taken, reduced to writing by me, in the presence of said witness, and was by said witness subscribed in writing in my presence.

I further certify that the reason for taking the 10
foregoing deposition is, and the fact is that the said witness lives, and at the time of taking said deposition did live, in Rogersville, Tennessee, the same being at a greater distance than &c., &c., &c., from &c., &c., &c., where the said Circuit Court of the United States for the Eastern District of Tennessee is held, and where the said cause mentioned in the caption is to be tried.

I further certify that I am not of counsel or attor- 11
ney for either of the parties to the said suit in said deposition and caption named, or interested in the event of said cause, &c., &c., &c.

In testimony whereof I hereunto set my hand and official seal, this first day of September, 1879.

[SEAL.]

A. R. HUMES,
Clerk.

12

1,002.

Deposition of Moses White.

THE UNITED STATES OF AMERICA, }
Eastern District of Tennessee. } ss :

Be it remembered, that on the 19th day of March, 1880, before me, Clerk of the United States Circuit Court for the Eastern District of Tennessee, at my office, in the City of Knoxville, within said District and the Sixth Circuit, was produced by consent of parties, and personally came, Moses White, Esq., witness on the part and behalf of the defendants in two certain suits now pending and undetermined in the Circuit Court of the United States for the Eastern District of Tennessee, wherein Calvin Amory Stevens *et als.*, on behalf of the holders of the Internal Improvement bonds of Tennessee, issued to East Tennessee, Virginia and East Tennessee and Georgia Railroad companies are complainants, and the East Tennessee, Virginia and Georgia Railroad Company *et al.* are defendants, to depose and the truth to say in said suits.

And thereupon the said Moses White, Esq., being of lawful age and sound mind, being by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, touching the matters in controversy in said suits, did, in answer to the interrogatories and cross-interrogatories propounded to him, depose and say as follows :

I reside in the City of Knoxville, Tennessee, and am editor of the Knoxville *Tribune ;* I resided in Knoxville from January, 1852, till the fall of 1858.

The East Tennessee and Georgia Railroad was completed—the cars first ran through—about the 25th of June, 1855 ; there was a formal celebration

of the event on the 4th of July, 1855, and an excursion. The last rail was laid on the East Tennessee and Virginia road, two miles and a half west of Blue Springs, on the 14th day of May, 1858, in the presence of the President and directors of said road.

Both of said roads were in process of construction in February, 1854, and had been for four or five years previous.

I have files of papers of dates referred to containing accounts of the construction and completion of said roads, and have recently refreshed my memory by reference to them.

And further this deponent saith not.

MOSES WHITE.

Sworn and subscribed to before me, this 19th March, 1880.

A. R. HUMES,
Clerk.

Clerk's fee for taking deposition, $1.00.

1

Deposition of Maney Bell.

UNITED STATES CIRCUIT COURT,

DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement Bonds of Tennessee, issued to the RAILROAD COMPANY,

versus

THE RAILROAD COMPANY *et al.*

2

Deposition of Maney Bell, witness for defendants, taken in Nashville, Tennessee, March 15th, 1880, before L. W. Humes, Special Examiner, duly appointed under an order of the United States Circuit Court, Western District of Tennessee. 3

Taken pursuant to agreement,

Present—W. Y. C. HUMES, *for Defendants.* 4

MANEY BELL, being first duly sworn, deposed as follows:

My name is Maney Bell; am 30 years of age; reside at present in Nashville; am now and have been

5 since October, 1873, except a period of seventeen months, ten months from 1st of May, 1874, to 1st March, 1875, and seven months from March, 1877, to December, 1877, a clerk in the office of the Secretary of State for Tennessee; have in the office of Secretary ofState books containing receipts for bonds of the State of Tennessee issued to turnpike companies, banks, railroad companies, agricultural bureau, and for the purchase of the Hermitage, and construction of the State Capitol, and also for bonds issued un-
6 der acts to fund the past due indebtedness of the State given by the agents appointed to receive bonds of the State issued for above purposes respectively; these books contain receipts dated from 1836 to 1877; copies of receipt for each of above purposes are made a part of this deposition and are marked respectively Exhibits A., B., C., D., E., F., G., and H., I., J., K., L., and M.; said receipts show number of bonds received, numbers of bonds, date and series, and purpose for which the bonds are to be issued;
7 this was the rule, but there were exceptions in which they failed to specify the series; for every bond issued by the State as shown by these books, whether for State, turnpike, railroad, or other purpose, receipts were given by the agents appointed to receive them, except I find no receipts for special issues to Bank of Tennessee under act of 1832; the bonds issued for all purposes by the State after passage of the Internal Improvement Act of February 11th, 1852, were issued of
8 the current series, except the bonds issued to the Capitol Commissioners to be used only in the construction of the State Capitol, and two special issues of bonds (40 bonds), issued to turnpike companies. All bonds issued by the State prior to 1852, with the exception of the Series White "A" issued under Act of 1838, were special issues—in all, 3,500 bonds, special issues, about 500 of

which are still outstanding. Each series of bonds was distinguished by letter or color, or both, and by words on the face of the bond, showing under what act or acts it was issued, its number and date of maturity. There were several separate series of bonds issued under the Internal Improvement Act of Feb. 11th, 1852, and acts amendatory thereto, viz.: Series B white, C white, B green, and Series Green Bonds not lettered. I give order in which the different series were issued under Internal Improvement Act and its amendments, with number of bonds and date of maturity.

Series "B" white, Nos.	1	to	7,958,	due in	1892
" " "	7,909	"	11,806,	"	1898
" "C" " "	1	"	1,878,	"	1898
" No lettter green "	1	"	8,470,	"	1892
" " " "	8,471	"	10,000,	"	1900
" "B" " "	1	"	5,203,	"	1900

Bonds of a particular series, issued under Act of 1851-2 and its amendments, were not confined to a particular railroad company or other internal improvement, but were issued alike for every purpose as application was made under the Acts. For example, of the Series "B" white, issued under said Act of Feb. 11th, 1852, 48 were issued for purchase of the Hermitage, 30 bonds to the Agricultural Bureau, and others to a Turnpike Company. Nearly every railroad received bonds of two or more series. The rule of issuing bonds, as shown by the receipts, was to issue to each proper applicant bonds whose number began with the number next after number of bond last issued, and of the current series. As to the question: "When was the fact first made known to the public of the numbers of the different series of bonds, and to what parties or corporations issued?" I answer that I find a printed statement in the form of a circular, issued

by Pennebaker, Comptroller, under date of July 25, 1870, setting forth the facts, but do not know that it was distributed generally ; the fact first appears in the reports of the Comptroller in a report to the General Assembly of 1875, by Jno. C. Burch, Comptroller. The receipt books show that all bonds of the State, for whatever purpose issued, and of whatever series, were numbered consecutively from No. 1 to end of series, and that receipts were required and given for same from 1838 to 1877.

The New Series Funding Bonds, Green F, issued under Act of 1873, were issued for past due bonds and coupons of the State, and when $1,000 in past due coupons were presented, no matter from what series of Bonds, or for what purpose or to what Company or Companies, the Bonds from which they were clipped were issued a new bond of the Funding Bond series, was issued in lieu. But as the greater part of the Funding Bond series was issued in lots of two up, it would be impossible to say that any particular coupon was taken up by any particular bond of the lot. As an illustration, I give this instance, taken from funding books of 1873 : $12,990 in past due coupons (being coupons cut from 44 State bonds), and $10 in currency, making $13,000, was funded into New Series Funding Bonds, Nos. 455 to 467, date of transaction August 22d, 1873. These coupon were clipped from Bonds for following purposes :

Series.	Originally issued to.	No. Coupons.	No. Bonds.	Am't.
White B.,	Memphis & Charleston R.R.,	10 Coupons each,	from 5 Bonds,	$1,500.
"	East Tenn. & Geo.,	10 " "	1 "	300
"	Memphis & Ohio,	10 " "	5 "	1,500
"	McMinville & Manchester,	10 " "	6 "	1,800
"	Mississippi & Tenn.,	10 " "	1 "	300
"	East Tenn. & Va.,	10 " "	3 "	900
"	Memphis & Charleston,	10 " "	1 "	300
"	Mississippi Cent'l & Tenn.,	10 " "	1 "	300
"	Mobile & Ohio,	10 " "	1 "	300
"	Louisville & Nashville,	10 " "	1 "	300
"	Memphis, Cl'ksvlle & Louisville	10 " "	3 "	900
"	Nashville & Northwestern,	10 " "	2 "	600
White D.,	Funding Bonds 1866,	10 " "	8 "	2,400
Green ——	Memphis, Clk'sville & Lou'ville,	3 " "	1 "	90
"	" " "	10 " "	1 "	300
	Memphis & Ohio,	10 " "	1 "	300
	East Tenn. & Va.,	10 " "	1 "	300
	Cin., Cum. Gap & Charleston,	10 " "	2 "	600
	Cash,			10
				$13,000

Therefore could only say that any particular coupon in above lot was taken up by New Series Funding Bonds, Nos. 455 and 467, and further saith not.

MANEY BELL.

Subscribed and sworn to before me, March 6th, 1880.

L. W. HUMES,
Special Examiner.

EXHIBIT "A."

Nashville, Murfreesboro & Shelbyville Turnpike Company.

Capital Stock, $200,000.

WHEREAS, the undersigned are of opinion that two-thirds of the capital stock of the "Nashville, Murfreesboro & Shelbyville Turnpike Company have been subscribed by individuals and other corporations, and are well secured. Now, therefore,

we do hereby agree that the Governor subscribe, on behalf of the State, for the remaining third of said capital stock (being $66,666⅔), agreeable to the provision of an act, entitled "an act to encourage internal improvement in the State," passed February 19th, 1836.

In testimony whereof, we have hereunto set our hands, this 23d day of Jan'y, 1836.

N. CANNON.

LUKE LEA,
Secretary of State.
DANIEL GRAHAM,
Comptroller.
MILLER FRANCIS,
Treasurer.

Bonds issued 25th July, 1836.

EXHIBIT B.

HIWASSEE RAILROAD COMPANY.

NASHVILLE, November 3, 1838.

$97,000.

Received of Newton Cannon, Governor of Tennessee, 97 State bonds, from No. 2 to 98, dated the 1st day of November, 1838, issued for the benefit of the Hiwassee Railroad Company.

W. NICHOL,
President of the Bank of Tennessee.

EXHIBIT C.

Bonds for State Capitol.

NASHVILLE, April 1st, 1848.

$50,000.

Received of Neil S. Brown, Governor of the State of Tennessee, two hundred State bonds, letter A, from number one to number two hundred inclusive, of these and all intermediate numbers of the denomination of two hundred and fifty dollars each, bearing date the 1st day of April, 1848, which bonds are issued under the authority and the description as provided for in the 3d Section of an Act passed by the General Assembly of the State of Tennessee on the 24th January, 1848, entitled "an Act to continue the construction of the State Capital."

JNO. M. BASS,

President of the Board of Commission to Superintend the erection of the State House.

EXHIBIT D.

NASHVILLE, May 15th, 1850.

Received of William Trousdale, Governor of the State of Tennessee, twenty-one State bonds of one thousand dollars each, $21,000, being No. 765 to No. 785 inclusive, letter A, dated 13th May, 1850, issued for the benefit of the East Tennessee and Georgia Railroad Company.

WM. LEDBETTER,

President.

29 EXHIBIT E.

Received of Andrew Johnson, Governor of the State of Tennessee, forty-eight coupon bonds of the State of Tennessee, dated the first of January, 1856, and falling due first of January, 1890, first coupon falling due first of July, 1856, issued in pursuance of an Act entitled "an Act to purchase the Hermitage passed February 11th, 1866, commencing at 3,538 to 3,585, both of these numbers inclusive, on
30 the issuance of the above bond the coupon falling due first of July, 1856, on the following bonds was cut off 3,538-9-40-41-42-43-44-45-46 and destroyed.

March 29th, 1856.

A. JACKSON.

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31 EXHIBIT F.

Received of Andrew Johnson, Governor of Tennessee, thirty coupon bonds of said State for one thousand dollars each, from No. 4,442 to 4,471, both these numbers inclusive, bearing interest six per cent., first coupon falling due 1st January, 1857, bonds falling due 1st January, 1892, principle payable in New York; said bonds are issued in pursuance of the sixth Section of an Act passed 18th
32 February, 1856, entitled "an Act to amend an Act entitled an Act to establish a State Agricultural Bureau, &c., and for the purpose of purchasing permanent fair grounds and for other purposes."

July 19, 1856.

S. R. COCKRILL.
J. SHELBY.
W. G. HARDING.

EXHIBIT G.

COMPTROLLER'S OFFICE,

NASHVILLE, TENN., April 2, 1866.

A. Crawford has this day deposited in my office one thousand and twenty-six past due coupons of the bonds of the State of Tennessee for thirty dollars each, and two hundred and twenty dollars in cash, amounting to thirty-one thousand dollars, for which he is entitled to six per cent. coupon bonds of the State, under the Act passed 23d November, 1865.

S. W. HATCHETT,
Comptroller.

STATE OF TENNESSEE,
Executive Department,
NASHVILLE, Tenn., April 2, 1866.

$31,000.

No. 169 to No. 199.

Received of W. G. Brownlow, Governor of the State of Tennessee, thirty-one of the six per cent. coupon bonds of the State for one thousand dollars each, dated the 1st day of January, 1866, payable January 1st, 1891, and numbered from 169 to 199, inclusive. First coupons due 1st July, 1866. Said bonds are issued under the Act of November 23d, 1865, in lieu of that amount of past due coupons off the bonds of the State which are filed with Comptroller of the Treasury.

Given under my hand this 2d day of April, 1866.

A. CRAWFORD.

EXHIBIT H.

37 *Bonds Issued to Comptroller.*

NASHVILLE, Tennessee, February, 1869.

No. 1,701 to 2,200.

Received this day of William G. Brownlow, Governor of the State of Tennessee, five hundred of the six per cent. coupon bonds of said State for one thousand dollars each, principal and interest payable in the City of New York. The bonds fall due
38 the first of January, 1900. The first coupons fall due the 1st of July, 1870. Said bonds are of the Green issue, denoted by the letter C, and numbered from 1,701 to 2,200, both numbers inclusive, and are issued to the Comptroller under the Act of September 5, 1868, entitled "An Act to regulate the State finances."

G. W. BLACKBURN,
Comp't.

39

EXHIBIT I

To Maney Bell's Deposition.

BONDS ISSUED TO COMPTROLLER.

Nos. 160 to 522.

NASHVILLE, Tenn., Sept. 21st, 1868.

Received, this day, of W. G. Brownlow, Gov-
40 ernor of Tennessee, three hundred and sixty-three bonds of said State, for one thousand dollars each, principal and interest payable in New York. The bonds fall due the 1st day of January, 1900, and the first coupons fall due the 1st day of January, 1869. Said bonds are issued to the Comptroller for the renewing of the bonds of the State that fell due the 7th day of May, 1868, under the Act of

Sept. 5th, 1868, entitled "An Act to provide for the 41
renewing of the Bonds of the State," etc. Said bonds of the green issue, letter C, and numbered from 160 to 522, both numbers inclusive.

G. W. BLACKBURN,
Comptl.

I, C. N. GIBBS, Secretary of State of the State of Tennessee, do certify that the foregoing is a copy of a receipt given by the Comptroller of the State for State bonds, series C, from No. 160 to 522 42
inclusive, the original of which is now of record at my office.

In testimony whereof I have hereunto subscribed my official signature, and, by order of the Governor, affixed the Great Seal of the State of Tennessee, at the Department, in the city of Nashville, this 18th day of March, A. D. 1880.

[SEAL.]

43

CHAS. N. GIBBS,
Secretary of State.

EXHIBIT J

To Maney Bell's Deposition.

BONDS ISSUED TO COMPTROLLER.

No. 523 to 1,000. 44

NASHVILLE, Tenn., Oct. 16, 1868.

Received, this day, of W. G. Brownlow, Governor of the State of Tennessee, four hundred and seventy-eight (478) of the bonds of said State, for one thousand dollars each, payable in New York, 1st day of January, 1900. The first coupons falling

due July 1st, 1869. Said bonds are of the green issue, of series C, and numbered from 523 to 1,000 inclusive. Said bonds are issued to the Comptroller for the renewing of the bonds of the State that fall due the 7th of May, 1868, under the Act of Sept. 5th, 1868, entitled "An Act to provide for the renewing of the bonds of the State," &c.

G. W. BLACKBURN,
Compt.

I, C. N. GIBBS, Secretary of State of the State of Tennessee, do certify that the foregoing is a copy of a receipt given by the Comptroller of State for State bonds, series C, from No. 523 to 1,000 inclusive, the original of which is now of record at my office.

In testimony whereof I have hereunto subscribed my official signature, and, by the order of the Governor, [SEAL.] affixed the Great Seal of the State of Tennessee, at the Department, in the city of Nashville, this 18th day of March, A. D. 1880.

CHAS. N. GIBBS,
Secretary of State.

EXHIBIT K
To Maney Bell's Deposition.

BONDS ISSUED TO COMPTROLLER.

No. 1001 to 1400.

NASHVILLE, TENN., September 21st, 1868.

Received of W. G. Brownlow, Governor of the State of Tennessee, four hundred of the six per cent. coupon bonds of said State, for one thousand dol-

lars each, principal and interest payable in New 49
York—The bonds on the 1st day of January, 1900; said bonds are of the Green issue of the series C, and numbered from 1001 to 1400, both numbers inclusive. Said bonds are issued to the Comptroller of the State, under the act passed Sept. 5th, 1868, entitled "an act to provide for the renewing of the bonds of the State, &c.," to enable said officer to negotiate a loan for the purpose of discharging the liabilities of the State.

G. W. BLACKBURN, 50
Compt.

I, C. N. GIBBS, Secretary of State of the State of Tennessee, do certify that the foregoing is a copy of a receipt given by the Comptroller of the State for State bonds, series C, from No. 1001 to 1400 inclusive, the original of which is now of record at my office. In testimony whereof, I have hereunto subscribed my official signature; and, by order of the Governor, affixed the Great Seal of the State of 51
Tennessee, at the Department in the City of Nashville, this 18th day of March, A. D. 1880.

CHAS. N. GIBBS,
(SEAL.) *Sec'y of State.*

52

53 EXHIBIT L

To Maney Bell's Deposition.

BONDS ISSUED TO COMPTROLLER.

No. 1401 to 1700.

NASHVILLE, TENN., Oct. 9, 1868.

Received of W. G. Brownlow, Governor of the State of Tennessee, three hundred of the six per cent. coupon bonds of said State, for one thousand dollars each, principal and interest payable in New
54 York, the principal on the 1st day of January, 1900, and the first coupons on the 1st day of January, 1869. Said bonds are of the Green issue and of the series——, and are numbered from 1401 to 1700, both numbers inclusive, and are issued to the Comptroller of the State under the act of Sept. 5th, 1868, entitled an act to regulate the finances of the State.

G. W. BLACKBURN,
Compt.

55 I, C. N. GIBBS, Secretary of State of the State of Tennessee, do certify that the foregoing is a copy of a receipt given by the Comptroller of the State for State bonds, from No. 1401 to 1700 inclusive, the original of which is now of record at my office. In testimony whereof, I have hereunto subscribed my official signature, and, by order of the Governor, affixed the Great Seal of the State of Tennessee, at the Department in the City of Nashville, the 18th day of March, A. D. 1880.

56 CHAS. N. GIBBS,
Sec'y of State.

EXHIBIT M

To Maney Bell's Deposition.

BONDS ISSUED TO THE COMPTROLLER.

No. 1701 to 2200.

NASHVILLE, TENN., Feb'y, 1869.

Received this day of William G. Brownlow, Governor of the State of Tennessee, five hundred of the six per cent. coupon bonds of said State, for one thousand dollars each, principal and interest payable in the City of New York. The bonds fall due the first day of January, 1900; the first coupons fall due the 1st of July, 1870. Said bonds are of the Green issue, denoted by the letter C, and numbered from 1701 to 2200, both numbers inclusive, and are issued to the Comptroller under the act of September 5, 1868, entitled "an act to regulate the State finances."

G. W. BLACKBURN,
Compt.

I, C. N. GIBBS, Secretary of State of the State of Tennessee, do certify that the foregoing is a copy of a receipt given by the Comptroller of the State for State bonds, series C, from No. 1701 to 2200 inclusive, the original of which is now of record at my office. In testimony whereof, I have hereunto subscribed my official signature, and by order of the Governor, affixed the Great Seal of the State of Tennessee at the Department, in the City of Nashville, this 18th day of March, A. D. 1880.

CHAS. N. GIBBS,
Sect'y of State.

(SEAL.)

1,020.

1

Deposition of Jas. L. Gaines.

UNITED STATES CIRCUIT COURT,

DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement Bonds of Tennessee, Issued to the RAILROAD COMPANY,

versus

THE RAILROAD COMPANY *et al.*

2

Deposition of JAS. L. GAINES; witness for defendants, taken in Nashville, Tennessee, March 16th, 1880, before L. W. Humes, Special Examiner, duly appointed under an order of the United States Circuit Court, Western District of Tennessee. 3

Taken pursuant to agreement.

Present—W. Y. C. HUMES, *for Defendant.*

JAS. L. GAINES, being first duly sworn, deposed as follows: 4

My name is Jas. L. Gaines, I am forty years old; I reside in Nashville, and hold the office of State Comptroller, which position I have

filled since February, 1875. From my familiarity with the books in the office of Secretary of State, I can say that there has been kept since 1836 a record of all the bonds issued by the State, giving a description of the bonds by numbers, dates of issuance and maturity, rate of interest, color, &c. From handling a great many of the bonds of the State I am satisfied, that the name of the railroad to which the bonds were issued under the Internal Improvement Act of 1851–2, were not written in or upon the bonds. The bonds of the State issued before the war to the railroad companies under the Internal Improvement Act of 1851–2, and amendments, had nearly or about forty years to run to maturity from date of issuance; those issued after the war under the same Act and amendments, matured in about twenty-five years and thirty years from date of issuance. I think all the State's obligations before the war were promptly met. In 1860 the following was the assessed valuation of the taxable property in the State, viz: Real estate $250,626,530; slaves, $115,609,554, and other personalty $22,700,755, total $388,936,844. In 1867 the assessed valuation was as follows: Real estate $214,284,584; personal property $11,108,826; total $225,393,410. Under our system of Internal Improvements the Nashville and Chattanooga Railroad was the first railroad completed in the State, and it was completed I think in about the year 1855. I have no data from which to ascertain the exact bond liability of the State on the 11th day of February, 1852, but the official report of the comptroller, under date "October 1851," places the total (bond) liabilities of the State at $3,651,856.66. As shown by the books of this office and by "settlement made by legislative committee December, 1868," the East Tennessee & Virginia Railroad was in default for four years to January 1st, 1866, in the sum of $249,378.55 in pay-

ing the interest on the bonds issued to the road by the State; and this sum or balance was merged into or added to the bond account of said railroad. From January, 1866 to January, 1869, the balance due on interest account by East Tennessee & Virginia Railroad was $52,793.93. This balance was paid January 11, 1869, and the July, 1869, instalment of interest was paid in July 1869, except $2,143.25 which was paid September 22, 1869. On account of the two instalments due January 1, 1870, and February 1, 1870, this road was in default something over $100,000.00. The same statement of facts applies as to the East Tennessee & Georgia Railroad, about the only difference being as to *amounts* of default. The same may be said of the Memphis & Charleston Railroad, which defaulted on interest payments during the war, and from time to time up to final settlement of its indebtedness. The Knoxville & Kentucky and the Cincinnati, Cumberland Gap & Charleston Railroad defaulted on all interest payments after January 1, 1868, to date of sale of roads by the State. Under the Act of February 25, 1869, and of January 20, 1870, the East Tennessee, Virginia & Georgia Railroad Company did, on or about 1st August, 1870, as shown by the books of this office, pay and satisfy to the State of Tennessee the entire indebtedness respectively of the East Tennessee & Virginia Railroad and of the East Tennessee & Georgia Railroad, for and in respect of all the bonds (including accrued interest on same up to July 1, 1870) which had been issued to or loaned to these roads by the State under the Internal Improvement Act of February 11, 1852, and Acts amendatory thereto. The total amount thus paid was $4,117,761.10, of which there was paid in 6% bonds of the State $3,835,000 00
And in past due coupons 282,750 00
And in cash 11 10

13 On the 25th July, 1877, Mess. A. Iselin & Co. paid to the State of Tennessee under the Acts of 1859 and 1870, above referred to, the entire indebtedness to the State, of the Memphis & Charleston Railroad, for and in respect of the bonds which had been issued to it under the Act of 1851–2, and amendments, including all the principal and accrued interest on the same. The total amount thus paid by Mess. Iselin & Co., was..... $1,736,920 00
Of which there was paid in 6% bonds of
14 the State..... 1,648,000 00
And in past due coupons..... 88,920 00

The Knoxville & Kentucky Railroad and the Cincinnati, Cumberland Gap & Charleston Railroad were sold by the State under the provisions of the law for the sale and lease of delinquent railroads. The former (K & K) road was sold October 10, 1871, to Mess. W. B. Johnson, C. M. McGhee, and others for the sum of $350,000.00, which sum was paid as follows:

15

240 bonds, with January, 1871, and subsequent coupons attached.....	$240,000 00
3 bonds with July, 1874, coupons.....	4,479 33
Past due coupons.....	7,500 00
Cash	20 67

The date of first payment being October 16th, 1871, and the date of the last payment September 24th, 1874.

The Cincinnati, Cumberland Gap and Charleston
16 Railroad, was sold October 16th, 1871, to Messrs. R. T. Wilson and C. M. McGhee, for the sum of $300,000.00, and payments were made as follows, viz.: 300 Tennessee bonds with January, 1871, and subsequent coupons attached, $300,000.00.

During the late civil war the several railroads did default in paying to the State the interest on their indebtedness to the State for the amount of State

bonds issued respectively to said railroad companies, as follows: the defaults as given, being for the four years to January 1st, 1866:

East Tenn. & Virginia Railroad.....	$249,378 55
East Tenn. & Georgia "	180,277 50
Edgefield & Kentucky "	200,167 85
Central Southern "	128,600 00
Cin., Cumb. Gap Charleston Railroad..	31,680 00
Knoxville & Kentucky Railroad	43,200 00
McMinnville & Manchester Railroad...	87,360 00
Mem., Clarksville & Louisville R. R...	312,600 00
Memphis & Charleston Railroad.....	185,387 45
Memphis & Ohio Railroad.....	403,110 00
Mississippi & Tenn. Railroad.....	22,800 00
Mobile & Ohio Railroad.....	388,800 00
Mississippi Central & Tenn. R. R. Co..	75,180 00
Nashville & Northwestern Railroad....	392,400 00
Rogersville & Jefferson Railroad.....	38,160 00
Tennessee & Alabama Railroad.....	225,016 00
Winchester & Alabama Railroad.....	143,259 00

At the dates of the final settlement of their respective indebtedness the several solvent roads or the roads which retired their debts under the Acts 1869–70, were in default as to interest payment as follows:

East Tennessee & Virginia R. R. (bal. January & July, 70)	$113,832 15	
East Tenn. & Georgia R. R. " .	86,612 86	
Memphis & Charleston " about	15,000 00	on account Jan., 1877.
Nashville & Decatur R. R. (Jan., 1871)	237,821 10	
Mobile & Ohio R. R. (Jan., 1872). .	100,000 00	July, 1871 and Jan., 1872.
Mississippi & Central..... ...	94,035 73	

On first July, 1870, the several delinquent railroads, they were in default on interest payment, as follows.

21	Edgefield & Kentucky Railroad.....	$365,220 00
	Cin., Cumb. Gap & Charleston R. R...	210,388 00
	Knoxville & Kentucky Railroad.....	351,180 00
	McMinnville & Manchester Railroad....	214,677 20
	Winchester & Alabama Railroad.....	315,309 93
	Rogersville & Jefferson Railroad.....	96,158 40
	Nashville & Northwestern Railroad....	817,725 16
	Knoxville & Charleston Railroad.....	85,200 00
	East Tenn. & Western, N. C. R. R....	26,000 00
	Mem., Clarksville & Louisville R. R...	613,936 56

22

The State paid no interest during the war. During the four years up to July, 1869, there was paid about $4,000,000.00 on account interest on State debt. From July, 1869, to January, 1874, the State paid no interest, but the interest for this period was funded under the Act of March 17, 1873. The semi-annual instalments of interest due July, 1874, Jan., 1875, and July, 1875, were paid. The State has been in de-
23 fault since Jan., 1876, including the installment due that date. In 1870 the bond liabilities of the State amounted to about $40,000,000. I have little or no knowledge of the market value, at that time, of State bonds or of company (R. R.) bonds. The railroad settlement reduced the State's debt on outstanding bonds and coupons by about $21,000,000. The first settlement by a railroad company with the State under the Acts of 1869 and 1870 was made in August 1870, and the last settlement was
24 made in Jan., 1878. If the holders of the State bonds issued to railroads under the Internal Improvement Laws have ever instituted any suit or proceeding against the railroads, other than these suits now pending, I am not aware of it. If such suit or proceeding had been instituted I think I would have known it. I can state as a matter of fact that the East Tennessee and Virginia Railroad,

the East Tennessee and Georgia Railroad made no payment on account of Sinking Fund after the war up to date of final settlement under the Acts of 1869 and 1870; the Cincinnati, Cumberland Gap and Charleston Railroad and the Knoxville and Kentucky Railroad never made any payment on account of the sinking fund; and the only credits received by the Memphis and Charleston on said account after the war were for the years 1872, 1873 and 1874. The amounts which ought properly to have been paid on sinking fund account by the several railroads would depend on the construction of the several Acts passed in this connection after the war, viz.: Act 1865–6, ch. 24, § 47; Act 1866–7, ch. 22; Act 1870, 2d Sess., ch. 69, § 1. No separate fund or account was kept of the money paid into the State Treasury after the war, as interest, by the several railroad companies on their debt to the State for the bonds loaned to them, but said money (if the interest were paid in money), went into the general fund the same as that derived from revenues and other sources. The system of making certain levies for certain purposes, and of classifying and appropriating the funds accordingly, has never obtained in this office, or in the office of the State Treasurer. Certainly, since the war, the State has not attempted to apply any money received from a railroad on account of interest to the payment, only and specifically, of the coupons of bonds issued to the railroad from which the money was received. In receiving and accepting coupons from railroad companies, it was only required that the coupons should be from the bonds of the State, regardless of purpose of issuance, and that they should be of the same date as the installment of interest which was being paid. The railroad companies, which were by the Governor put into the hands of Receivers, not only failed to pay

29 the arrears of interest to the State, but cost the State considerable sums in her effort to them, with the exception, perhaps, of the Mississippi Central Railroad Company. The interest due July 1, 1869, from the East Tennessee and Virginia Railroad was paid by said Road. In February, 1870, a portion of the January, 1870, instalment was paid, leaving balance due on said instalment about $4,000, and no further payment was made on that account until final settlement of said road's indebtedness, under
30 the Acts of 1869 and 1870. Likewise in case East Tennessee and Georgia Railroad interest was paid from January, 1866, up to and including the interest due July, 1869. In October, 1869, $1,423.74 was paid on account interest due January, 1870, leaving balance of about $42,500 on said instalment, which was not paid until final settlement in August, 1870. As to the Memphis and Charleston Railroad there was due in May, 1870, about $7,000 on account interest past due January, 1870, from which date the
31 road was in arrears from time to time up to January, 1875, when all interest up to and including that instalment was settled in full. The instalments falling July, 1875, January, 1876, and July, 1876, were paid during the year 1876. December 15, 1876, payment was made on account of instalment falling due January 1, 1877, leaving balance due of about $15,000 on said instalment, which balance was not paid until July, 1877, when final settlement of the road's entire indebtedness
32 was paid under the Acts of 1869 and 1870. In this connection I would state that the amount of defaults on interest account by the several railroads, January 1st, 1866, as ascertained by Legislative Committee, and given in the first part of this deposition, beginning "East Tennessee and Georgia R. R. Co., $249,378.55, and ending Winchester and Alabama Railroad $143,259.00" were added respectively to

the principal due by each railroad, and in speak- 33
idg of the interest due by railroads after January, 1860, these amounts are not taken into consideration. I have no exact official data as to the amount of the bond debt of the State on 20th day of January, 1870, but the Official Report of the Comptroller, dated October, 1869, fixes the amount in July, 1869, at $39,212,244,55.

The amount paid:

By the retiring railroads,.....	$14,786,600 00	34
By the sold roads,.....	6,698,000 00	
And by the Louisville and Nashville Railroad, in 1865, under a resolution of the Legislature, dated May 5th, 1865,.....	$707,631 25	

Under the Act of March 17, 1873, any and all past due bonds and coupons of the State, legally issued, were fundable, and the bonds not due were to be registered. And before this Act was repealed it is believed that all the bond liability of the State was 35
either funded or registered, except about $1,000,-000 00, of which amount about $400,000 00, was composed of past due bonds, not presented for renewal, and about $350,000 of bonds not presented for registration, and about $250,000 coupons not presented for funding.

I herewith append a correct

36

37

STATEMENT OF BONDS

Issued by the State of Tennessee prior to the Act 1851–52, arranged according to series showing the numbers of bonds issued, for what purpose expressly issued, when due, their present condition, etc., each bond being for $1,000, except where specially noted otherwise :

500 BONDS ; Interest 5 per cent.; Issued under Act of 1832 ; Matured after 15, 20, 25 and 30 years.

38

WHEN ISSUED.	NO. OF BONDS.	TO WHOM ISSUED.	HOW NUMBERED.	REGISTERED, NOT CANCELLED.	REGISTERED AND CANCELLED.	CANCELLED BEFORE REGISTRATION	CANCELLED BY RENEWAL UNDER ACT DEC., '66, AND ACT MARCH, 1873.	STILL TO BE RENEWED.	STILL OUT TO BE REGISTER'D	E. T. U.
Jan. 1, 1833	125	Union Bank of Tenn...	1 to 125	.....	.....	125	.....	....	....	.....
" "	125	" " " ...	1 to 125	.....	.....	125	.....	...	....	.....
" "	125	" " " ...	1 to 125	.....	.....	125	.....	....	....	.....
" "	125	" " " ...	1 to 125	.....	.....	.....	.....	125	....	.....
.....	500	.....	.....	.....	.....	375	.....	125	....	.....

Special issue of 67 Bonds ; 5¼ per cent.; Matured after 25 years ; Act 1836.

39

July 25, '36	66	Nashville, Murfreesboro' & Shelbyville T.P.Co.	1 to 66	.....	.....	66	.....	....	....	.....
" "	1	" " "	67 for $666⅔	.....	.....	1	.....	....	....	.....
.....	67	.....	.....	.....	.....	67	.....	....	....	.....

Special issue of 31 Bonds ; 5 ¼ per cent.; Under Act of 1835-36 ; Matured after 25 years.

Nov. 1, '37	18	Gallatin Turnpike Co.	1 to 18	.....	.....	18	.....	....	....	.....
Mar. 31, '38	12	" " "	19 to 30	.....	.....	12	.....	....	....	.....
" "	1	" " "	31 for $500	.....	.....	1	.....	....	....	.....
.....	31	.....	.....	.....	.....	31	.....	....	....	.....

Special issue of 40 Bonds ; 5¼ per cent.; Under Act 1835-6 ; Matured after 25 years.

40

Oct. 5, 1837	10	Lebanon and Nashville T. P. Co.	1 to 10	.....	.....	10	.....	....	....	.....
Nov. "	2	" " "	11 to 12	.....	.....	2	.....	....	....	.....
Jan. 1838	4	" " "	13 to 16	.....	.....	4	.....	....	....	.....
Feb. "	4	" " "	17 to 20	.....	.....	4	.....	....	....	.....
May, "	4	" " "	21 to 24	.....	.....	2	.....	2	....	.....
July, "	4	" " "	25 to 28	.....	.....	3	 1	....	....	.....
Aug., "	4	" " "	29 to 32	.....	.....	4	.....	....	....	.....
Oct. "	4	" " "	33 to 36	.....	.....	4	.....	....	....	.....
Nov. "	4	" " "	37 to 40	.....	.....	3	.....	.. 1	....	.....
.....	40	.....	.....	.....	.....	36	 1	.. 3	....	.....

Special issue of 109 Bonds ; 5¼ per cent.; Under Act 1835-6 ; Matured after 25 years.

Oct. 1837	.....	La Grange and Memphis R. R. Co.	1 to 30	.....	.....	30	.....	....	....	.....
" 1837	.....	" " "	31 for $1250	.....	.....	1	.....	....	....	.....
" 1838	.....	" " "	32 to 61	.....	.....	27	.....	3	....	.....
" 1838	.....	" " "	62 for $1283	.....	.....	1	.....	....	....	.....
Mar. 1839	.....	" " "	63 to 92	.....	.....	20	.....	10	....	.....
" 1839	.....	" " $2,000 each	93 for $1250	.....	.....	1	.....	....	..	.....
Sept. 1839	.....	" " "	94 to 108	.....	.....	14	.....	1	....	.....
" 1839	.....	" " "	109 for $1250	.....	.....	1	.....	....	....	.....
			210 in Lieu.	.....	.....	1	.....	....	....	.....
.....	110	.....	.....	.....	.....	96	.....	14	....	.....

41

Special issue of 2500 Bonds ; 6 per cent.; Under Act 1838 ; Matured after 30 years.

WHEN ISSUED.	NO. OF BONDS.	TO WHOM ISSUED.	HOW NUMBERED.							E. T. U.
May 7, '38	1000	Bank of Tennessee.....	1 to 1000	.....	.....	786	191	23	...	.....
July 2, '38	1500	" "	1001 to 2500	.....	.....	1500	.....	....	....	.....
		Nos. 1001 to 1100 returned and cancelled Feb'y 5, 1840.....	Under Act 1840.							
		Nos. 1101 to 2500 returned and cancelled Feb'y 27, 1840								
.....	2500	.....	.....	.....	.....	2286	191	23	.....	.....

42

300 Bonds were issued under Act of 1830 to the Union Bank of Tennessee for improvement of rivers in Tennessee. They were numbered 1 to 300, 5 per cent., maturing 30 years after date. They were cancelled without being used.

43

44

45

SERIES "A."

Five per cent. Bonds; Issued under Act of 1838; Mature after 30 years.

	Nov. 3,	1838.	1	Chambers and Purdy T. P. Co.	1			1				
	"	"	97	Hiwassee R. R. Co.	2 to 98			70	19	8		
	"	"	22	Franklin & Columbia T. P. Co.	99 to 120			13	7	2		
	"	"	45	Columbia Central T. P. Co.	121 to 165			34	6	5		
	"	"	15	Nashville & Charlotte T. P. Co.	166 to 180			13	2			
	" 5,	"	16	Fayetteville & Shelbyville T. P. Co.	181 to 196			16				
	" 24,	"	41	Gallatin T. P. Co.	197 to 237			37	3	1		
	" 30,	"	24	Columbia Central T. P. Co.	238 to 261			23		1		
	Jan. 3,	1839	26	Harpeth T. P. Co.	262 to 287			10	9	7		
	" 4,	"	20	Cumberland & Stones River T.P.Co.	288 to 307			11	5	4		
46	" 5,	"	30	Lebanon & Nashville T. P. Co.	308 to 337			13	13	4		
	" 7,	"	2	Chambers & Purdy T. P. Co.	338 to 339				2			
	" 7,	"	6	Jefferson T. P. Co.	340 to 345			1	5			
	" 9,	"	9	Nashville & Charlotte T. P. Co.	346 to 354			1	7	1		
	" 21,	"	32	Louisville, Cin. & Charleston R.R.Co	355 to 386			32				
	Feb. 1,	"	3	Chambers & Purdy T. P. Co.	387 to 389				3			
	Mch. 2,	"	7	Pelham & Jasper T. P. Co.	390 to 396			3	3	1		
	" 8,	"	5	Clarksville & Russellville T. P. Co.	397 to 401			3		2		
	" 22,	"	27	Gallatin T. P. Co.	402 to 428			12	9	6		
	" 25,	"	7	Forked Deer T. P. Co.	429 to 435			7				
	May 3,	"	12	Columbia, Pulaski & Elkton T.P.Co	436 to 447			7	3	2		
	" 14,	"	1	Chambers & Purdy T. P. Co.	448			1				
	June 14,	"	6	Big Hatchie T. P. Co.	449 to 454			4	1	1		
	July 10,	"	1	Gallatin & Cumberland T. P. Co.	455			1				
	Aug. 13,	"	10	Nolensville T. P. Co.	456 to 465			5	3	2		
	" 13,	"	15	Ashport T. P. Co	466 to 480			10	5			
	Sept. 10,	"	4	Nolensville T. P. Co.	481 to 484			2	2			
	" 10,	"	14	Lebanon & Sparta T. P. Co.	485 to 498			9	4	1		
	" 10,	"	3	Jefferson T. P. Co.	499 to 501			1	2			
	" 10,	"	98	Hiwassee R. R. Co.	502 to 591			38	46	14		
	Nov. 5,	"	8	Big Hatchie T. P. Co.	600 to 607			5	3			
47	" 22,	"	9	Nashville & Kentucky T. P. Co.	08 to 616			5	4			
	Dec. 10,	"	10	Clarksville & Russellville T. P. Co.	617 to 626			7	2	1		
	Jan. 6,	1840	6	Nashville & Charlotte T. P. Co.	627 to 632			2	3	1		
	" 18,	"	65	Hiwassee R. R. Co.	633 to 697			16	23	26		
	" 24,	"	49	Franklin & Columbia T. P. Co.	698 to 746			16	28	5		
	June 24,	"	14	Nolensville T. P. Co.	747 to 760			4	10			
	" 24,	"	3	Gallatin & Cumberland T. P. Co.	761 to 763			1	2			
	" 24,	"	4	Nashville & Kentucky T. P. Co.	764 to 767			1	3			
	" 24,	"	34	Columbia, Pulaski & Elkton T.P.Co.	768 to 801			11	18	5		
	Aug. 3,	"	11	Gallatin T. P. Co.	802 to 812			1	9	1		
	" 11,	"	8	Clarksville & Russellville T. P. Co.	813 to 820			2	6			
	" 11,	"	31	Lebanon & Sparta T. P. Co.	821 to 851			9	21	1		
	Nov. 5,	"	18	LaGrange & Memphis R. R. Co.	852 to 869, 1 for $1,750	1	10	10	7	1		
	" 10,	"	20	Ashport T. P. Co.	870 to 889			10	8	2		
	" 16,	"	10	Clarksville and Russellville T.P.Co.	890 to 899			1	8	1		
	" 20,	"	13	Nolensville T. P. Co.	900 to 912			2	7	4		
	Dec. 9,	"	15	Lebanon and Sparta T. P. Co.	913 to 927			4	7	4		
	Feb. 5,	1841	5	Lebanon and Sparta T. P. Co.	928 to 932				5			
	May 18,	"	15	Columbia, Pulaski and Elkton T.P.Co	933 to 947			5	5	5		
48	" 19,	"	3	Fulton T. P. Co.	948 to 950				3			
	" 19,	"	37	LaGrange and Memphis R. R. Co.	951 to 987, 1 for $1,500			7	26	4		
	" 20,	"	97	Hiwassee R. R. Co.	988 to 1084			14	48	35		
	June 3,	"	81	Columbia Central T. P. Co.	1085 to 1165			25	48	8		
	July 19,	"	22	Gallatin T. P. Co.	1166 to 1187			5	13	4		
	Aug. 20,	"	14	Columbia, Pulaski and Elkton T.P.Co	1188 to 1201			2	11	1		
	" 27,	"	13	Nashville and Kentucky T. P. Co.	1202 to 1214			5	8			
	Sept. 9,	"	27	Cumberland & Stones River T.P.Co.	1215 to 1241			1	26			
	" 9,	"	8	Nolensville T. P. Co.	1242 to 1249			3	5			
	" 9,	"	4	Columbia, Pulaski and Elkton T.P.Co	1250 to 1253			1	3			
	Oct. 29,	"	4	Clarksville and Russellville T. P. Co	1254 to 1257, 1 for $1,500			1	3			
	Nov. 10,	"	10	Lebanon and Sparta T. P. Co.	1258 to 1267				10			
	" 20,	"	27	Columbia, Pulaski and Elkton T.P.Co	1268 to 1294			5	15	6		
	Dec. 21,	"	18	LaGrange and Memphis R. R. Co.	1295 to 1312			12		6		
	" 30,	"	12	Cumberland & Stones River T.P.Co.	1313 to 1324				11	1		

May 14,1842	17	LaGrange and Memphis R. R. Co...	1325 to 1341	....	....	7	5	5	..		49
June 16, "	9	Cumberland & Stones River T.P Co.	1342 to 1350	....	....	2	3	4	..		
" 27, "	3	Fulton T. P. Co.....	1351 to 1353	....	....	....	3	..	..		
Aug. 6, "	8	Columbia, Pulaski and Elkton T.P.Co	1354 to 1361	....	....	4	4	..	..		
Sept. 8, "	2	Gallatin T. P. Co.....	1362 to 1363	....	....	2	..	..	..		
" 9, "	26	Pelham and Jasper T. P. Co.....	1364 to 1389	....	....	11	11	4	..		
" 27, "	13	Nashville and Kentucky T. P. Co..	1390 to 1402	....	....	6	5	2	..		
Oct. 22, "	18	Cumberland & Stones River T.P.Co.	1403 to 1420	....	...	2	15	1	..		
Jan. 11,1843	8	Columbia, Pulaski and Elkton T.P.Co	1421 to 1428	...	....	3	5	..	..		
" 12 "	8	Nashville and Kentucky T. P. Co ..	1429 to 1436	....	....	....	7	1	..		
Feb. 27 "	11	Cumberland & Stones River T.P.Co.	1437 to 1447	....	....	4	7	..	..		
Mar. 7 "	24	Jefferson T. P. Co.....	1448 to 1471	....	....	5	17	2	..		
July 23 "	11	Pelham and Jasper T. P. Co.....	1472 to 1482	....	....	3	7	1	..		
Aug. 5 "	10	Cumberland & Stones River T.P.Co.	1483 to 1492	....	...	7	3	..	..		
Sept. 19 "	4	Jefferson T. P. Co.....	1493 to 1496	....	....	1	3	..	..		
Nov. 1 "	5	Lebanon and Nashville T. P. Co	1497 to 1501	....	....	1	3	1	..		
" 14,1844	13	Harpeth T. P. Co.....	1502 to 1514	6	....	5	..	..	12		
Dec. 4 "	6	Jefferson T. P. Co	1515 to 1520	5	1	....	..	..	..		
Jan. 30,1845	8	Murfreesboro & Manchester T.P.Co.	1521 to 1528	8	....	....	..	..	..		
June 5 "	3	Columbia, Pulaski and Elkton T.P.Co	1529 to 1531	3	....	....	.	..	..		50
Aug. 30 "	3	Nashville and Kentucky T.P.Co....	1532 to 1534	2	....	....	..	1	8		
Sept. 10 "	25	Murfreesboro & Manchester T.P.Co.	1535 to 1559	24	....	....	..	1	..		
Jan. 3,1846	13	" " "	1560 to 1572	13	....	....	..	..	..		
Feb. 18 "	6	Lebanon and Nashville T. P. Co....	1573 to 1578	6	....	....	..	..	..		
April 16 "	4	Franklin and Columbia T. P. Co....	1579 to 1582	1	....	3	..	..	..		
July 3 "	2	Jefferson T. P. Co	1583 to 1584	2	....	....	..	..	..		
" 15 "	2	Columbia, Pulaski and Elkton T.P.Co	1585 to 1586, 1 for $1,600	1	....	1	..	..	..		
Sept. 23 "	3	Murfresboro & Manchester T.P.Co..	1587 to 1589, 1 for $1,900	3	....	....	..	..	..		
Feb. 8, 1847	10	Lebanon and Sparta T. P. Co... ...	1590 to 1599, 1 for $1,800	5	1	1	..	3	..		
April 1,1847	79	Hiwassee R. R. Co.....	1600 to 1678	48	16	13	..	2	..		
Nov. 15 "	13	" " "	1679 to 1691	11	....	2	..	..	..		
Aug. 21,1849	27	East Tennessee & Georgia R.R.Co..	1692 to 1718	20	4	3	..	..	..		
Nov. 2 "	46	" " " ..	1719 to 1764	35	4	4	..	3	..		
May 15,1850	21	" " " ..	1765 to 1785	20	....	....	..	1	..		
Sept. 9 "	31	" " " ..	1786 to 1816	22	6	3	..	..	..		
Dec. 21 "	33	" " " ..	1817 to 1849	28	5	....	..	..	..		
June 30 1851	18	" " " ..	1850 to 1867	15	....	3	..	..	..		51
Nov. 20 "	25	" " " ..	1868 to 1892	12	....	7	..	6	..		
.....	1	" " " ..	1966	....	1	....	..	..	..		
	1893	.....	.....	290	38	670	666	210	19		
		No 1786 was duplicated, making in all 1894 Bonds.									

Mature July, 1890; No Letter Series, White Bonds; Issued under Act January 30, 1850; 6 per cent.

Sept. 1,1850	150	East Tennessee and Georgia R.R.Co	1 to 150	117	16	8	...	9	...	
May 3,1851	100	" " " "	151 to 250	84	5	3	4	4	...	
" 26, "	100	" " " "	251 to 350	17	2	....	....	1	...	
.. ..	350	.....	.....	298	23	11	4	14	..	

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49 Under the act of November 23, 1865, 4,941 bonds were issued by the State, amounting to $4,941,000.00. These bonds are known and designated as white D bonds, and with them the State, under the terms of the act, took up or funded all past due coupons from the bonds of the State and coupons maturing January 1, 1866, and also any past due bond or bonds which might fall due during the year 1867. As a matter of fact, a comparatively small amount of *bonds* due and past due were funded under this
50 act. There are no data or records in this office from which it can be shown or ascertained what particular coupons went to make up any one of these bonds—in other words, the records do not show or enable you to trace from what bonds the funded coupons were taken. In explanation of the manner in which the funding under the act of November, 1865, was conducted, I herewith append, *as Exhibit* "*G*," a correct copy of the record covering four funding transactions under this act of 1865, and the original,
51 of which this is a copy, is the only record known to me of these transactions. I herewith append, printed, Exhibit "H," which is a statement certified by me under date April 8, 1878; and I believe the same to be a correct statement at this time, showing amount of bonds issued by the State of Tennessee in aid of different railroad companies, and what disposition has been made of the indebtedness to the State in case of those several railroads. (See also Exhibits A, B, C, D, E and F, statements of ac-
52 counts, made parts hereof.)

The bonds of cities and railroads endorsed by the State outstanding on the 1st October, 1869, amounted to $2,196,000.00, and, as far as I can ascertain, the same amount was outstanding on the 20th January, 1870. The bonds issued for and as renewals were printed on the same plates as the bonds issued to railroads, and were of the consecutive numbers of

the then current series; nor was there anything in 53
the face of these bonds or upon them to distinguish them from the bonds issued to railroads. I herewith append statements account of the East Tennessee & Virginia Railroad, East Tennessee & Georgia Railroad, East Tennessee, Georgia & Virginia Railroad, Cincinnati, Cumberland Gap & Charleston Railroad, Knoxville & Kentucky Railroad, and of the Memphis & Charleston Railroad, and marked respectively Exhibits A, B, C, D, E and F, the same being correct statements, as shown by the books of 54
this office.

And further saith not.

JAS. L. GAINES.

Subscribed and sworn to before me, March 16th, 1880.

L. W. HUMES,
Special Examiner.

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61

EXHIBIT A[1]

To Gaines Deposition

STATEMENT BOND ACCOUNT,

East Tennessee & Virginia Railroad Co., with the State of Tennessee.

1858.
Jan. 1. Settlement made by Legislative committee.
Dec. 2, 1868.
To 1602 State Bonds..... $1,602,000 00
1861.
Jan. 1. By 3 bonds cancelled by sinking fund..... 3,000 00
$1,599,000 00

62

FUNDED INTEREST.

Interest on $1,599,000.00 4 years to Jan. 1,1866		$383,760 00
Coupons of endorsed bonds.....		34,590.00
Interest due July 1, 1861.....	$47,970 00	
By Cash paid.....	30,000 00	17,970 00
Interest due Jan. 1, 1862.....	47,970 00	
By Cash paid.....	5,000 00	42,970 00
		$479,290 00

1862.
May 26. By Cash..... $31,000 00
Interest on same 3 years 7 mos..... 6,665 00
June 30. By Cash..... 45,000 00
Interest 3½ years..... 9,450 00
63 Dec. 9. By Cash..... 87,170 00
Interest 3 years 7 mos..... 16,126 45
1863.
July 19. By Cash..... 30,000 00
Interest 2½ years..... 4,500 00
$129,911 46 $49,378 55
1866.
April 26. To 300 Bonds..... 300,000 00
$2,143,878 55

1866.
July 1. To interest on $2,148,378.55..... $64,451 35
1867.
Jan. 1. " " " " 64,451 35
Feb. 14. " 300 Bonds..... 300,000 00
July 1. " Interest on $2,448,378.55..... 73,451.35
64 1868.
Jan. 1. " " " " 73,451 35
July 1. " " " " 73,451 35
1869.
Jan. 1. " " " " 73,451 35
$422,708 10
By Cash..... 369,914 17
$52,793 93
1869.
March 25. Funded this day 22 coupons of your endorsed bonds..... 660 00
$2,449,038 55

STATEMENT INTEREST ACCOUNT. 65

East Tennessee and Virginia Railroad Co., with the State of Tennesee.

1869.	To interest, bal. as per settlement	$52,793 93	
July 1.	" " "	73,471 15	
1870.			
Jan. 1.	" " "	73,471 15	
July 1.	" " "	73,471 15	
" 28.	" Express charges on bonds	250 00	
" 29.	" " " " "	250 00	
	" Amount brot. forward (Bonds)	2,449,038 55	
			$2,722,745 93

66

1869.			
Jan 11.	By Payment	52,793 93	
July 11.	"	71,308 10	
Sep. 22.	"	2,143 25	
Dec. 31.	"	110 15	
1870.			
Feb. 4.	"	33,000 00	
July 29.	"	500 00	
	" Amt. carried forward to consolidated acct.	25,628 70	
		$2,722,726 13	$2,722,745 9

67

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69

EXHIBIT B[1]

To J. L. Gaines' Deposition.

STATEMENT BOND ACCOUNT
East Tennessee and Georgia Railroad Co.
With the State of Tennessee.

Settlement made by Legislative Committee,

Dec. 2, 1868.

	1861			
70	Jan'y 1.	To 1,162 Bonds, ...		$1,162,000 00
	Feb'y 5.	Cancelled by Sinking Fund, .	$ 2,000 00	
	Nov. 2 and 20	" " " "	23,000 00	
	1862			
	June 4.	Bonds returned and cancelled,	100,000 00	125,000 00
				$1,037,000 00

FUNDED INTEREST.

71		$1,037,000.00 4 years' Interest,		$ 248,880 00
		Coupons on Endorsed Bonds funded, ...		6,420 00
				$ 255,300 00
	1862			
	July 1	By cash, ...	$ 62,220 00	
		Interest on $31,110.00 from July, 1862. to Jan'y, 1866,	6,533 01	
		Interest on $31,110.00 from		
72		Jan'y, 1863, to Jan'y, 1866,	5,599 80	
		Balance in Sinking Fund acc't,	540 00	
		Interest on do., ...	129 60	75,022 50
				$ 180,277 50
		Balance of Bonds above, . .		1,037,000 00
				$1,217,277 50

1866.					73
July	1	To Interest on $1,217,277.50,	$ 36,518 32		
Oct.	17	" 250 Bonds, ...		250,000 00	
1867					
Jan'y	1	" Interest on $1,467,277.50,	44,018 32		
July	1	" " " "	44,018 32		
1868					
Jan'y	1	" " " "	44,018 32		
July	1	" " " "	44,018 32		
1869.					
Jan'y	1	" " " "	44,018 32		74
			$256,609 92		
		By cash to date, ...	216,432 20		
			$ 40,177 72	$1,467,277 50	

Statement Interest Account
East Tennessee and Georgia Railroad Co.
With the State of Tennessee.

1869.		To Interest Balance as per settlement, ...	$ 40,177 72		75
July	1	" "	44,018 32		
1870.					
Jan'y	1	" "	44,018 32		
July	1	" "	44,018 32		
		Am't bro't forward Bonds,	1,467,277 50		
				$1,639,500 18	
1868.					
Dec.	28.	By Payment, ...	$ 40,177 72		76
1869.					
July		" "	37,128 49		
Sept.	22	" "	6,889 83		
Oct.	13	" "	1,423 74		
		" am't carried forward to consolidated acc't,	1,553,890 40		
				$1,639,510 18	

77 EXHIBIT C[1].

To Jas. L. Gaines' Deposition.

STATEMENT ACCOUNT.

East Tennessee, Virginia and Georgia Railroad Co. (Consolidated) with the State of Tennessee.

	1870.		
	Aug. 1,	To Bal. from Acct. East Tennessee and Virginia Rail road Company, . .	$2,562,870 70
78		To Bal. from Acct. East Tennessee and Georgia Railroad Company, . . .	1,553,890 40
		To Error in computing Interest, . . .	1,000 00
			$4,117,761 10
	1870.		
79	Aug. 1,	By 3,835 State Bonds, .	$3,835,000 00
		" 9,425 Past due Coupons,	282,750 00
		" Cash, ...	11 10
			$4,117,761 10

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EXHIBIT D[1]

81

To Jas. L. Gaines' Deposition.

STATEMENT BOND ACCOUNT.

MEMPHIS & CHARLESTON R. R. Co. WITH STATE OF TENNESSEE.

Settlement by Legislative Committee,
Dec. 2, 1868.

1856.				
Sept.	29,	To bonds loaned		$1,100,000 00
1862.				
Jan.	1,	Cancelled by Sinking Fund.....		21,000 00
				1,079,000 00

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FUNDED INTEREST.

$1,079,000 4 years.....	$25,896 00	
Balance of interest due Jan., 1862	3,540 00	
	$162,500 00	

CREDITS.

1862.				
May	14,	By cash.....$32,430 00		
		3 years 8 mos. interest 7,134 60		
1863.				
April	10,	By cash..... 32,230 00		
		3 years 9 mos. interest 5,317 95		
			$77,112 55	
			$185,387 45	

83

		To bonds, above amount..... .$1,790,000 00		
1866.				
April	17,	" 200 bonds this day delivered	200,000 00	
		" Funded interest.....	185,387 45	
				$1,464,387 45
1866.				
July	1,	To interest on $1,464,387.45....	$43,931 62	
June	27,	" 100 bonds		100,000 00
1867.				
Jan'y	1,	" Interest on $1,564,387.45...	46,931 62	
July	1,	" " " " ...	46,931 62	
1868.				
Jan'y	1,	" " " " ...	46,931 62	
July	1,	" " " " ...	46,931 62	
1869.				
Jan'y	1,	" " " " ...	46,931 62	
			$278,589 72	
		By payments to 27th June, 1868, inclusive.....	236,329 50	
			$42,260 22	

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85 1868.

Oct.	20,	To bonds issued this day.....		300,000 00
1871.				
June	27,	By 33 bonds from Sinking Fund	$33,000 00	
		" Past due coupons on same..	2,790 00	
		" 12 bonds.....	12,000 00	
		" Past due coupons on same...	1,975 00	
		" Coupons.....	480 00	
1873.				
April	1,	By 44 bonds.....	44,000 00	
		" 176 coupons, past due, attach'd	5,280 00	
		" 776 " " detached	23,280 00	
		" Cash	570 00	

86

1874.				
Nov.	6,	" 69 bonds, July, 1874, coupons.	69,000 00	
		" 220 past due coupons.....	660 00	
		Cash.....	50	
1877.				
July	25,	" 1,309 bonds, July, 1877, and sub. coupons.... ..		
		" 21 bonds, Jan'y, '77, do..		
		" 318 bonds, Jan'y, '76, do..	1,648,000 00	

1,648 total bonds.

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ATTACHED COUPONS.

1648	coupons, July 1, 1877	49,440 00	
339	" Jan. 1, "	10,170 00	
318	" July 1, 1875	9,540 00	
318	" Jan 1, 1876	9,540 00	
341	Detached coupons.....	10,230 00	
	To balance from interest account		64,900 00
	" amount overpaid.....		103 75
		$1,929,391 20	$1,929,391 20

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STATEMENT INTEREST ACCOUNT 86

Memphis & Charleston Railroad Company with the State of Tennessee.

1869.			
Jan. 1,	To Interest Bal. as per settlement,	$42,250 22	
July 1,	To Interest,	55,931 62	
1870.			
	6 M's Interest,	677 94	
Jan. 1,	To Interest,	55,931 62	90
July 1,	" "	55,931 62	
1871.			
Jan. 1,	" "	55,931 62	
July 1,	" "	55,931 62	
1872.			
Jan. 1,	" "	55,931 62	
July 1,	" "	55,931 62	
1873.			
Jan. 1,	" "	54,424 27	
July 1,	" "	52,247 30	91
1874.			
Jan. 1,	" "	52,247 30	
July 1,	" "	50,157 48	
1875.			
Jan. 1,	" "	50,157 48	
July 1,	" "	50,157 50	
1876.			
Jan. 1,	" "	50,157 50	
Apr. 26,	" Error June 27, 1872 (credit to Miss. & Tenn.)	480 00	92
July 1,	" Interest,	50,157 50	
1877.			
Jan. 1,	" "	50,157 50	
July 1,	" "	50,157 50	
		$945,960 83	

93	1868.		
	Dec. 21,	By Payment Cash, .	33,899 22
	1870.		
	May 26,	" " " .	28,804 78
		" 85 Bonds, . .	85,000 00
	1871.		
	Feb. 21,	" 504 Coupons @ $30 00,	15,120 00
		" 11 " " 25 00,	275 00
		" 132 " " 30 00,	3,960 00
		" 75 " " 30 00,	2,250 00
94		" 14 " " 25 00,	350 00
		" Cash, . .	470 00
		" Past due Bonds, . .	3,000 00
		" 400 Coupons @ $30 00,	12,000 00
		" 60 " " 25 00,	1,500 00
		" 20 " " 26 25,	525 00
	Mar. 24,	" 5 Bonds, . .	5,000 00
		" 28 Coupons @ $26 25,	735 00
		" 18 " " 25 00,	450 00
		" 562 " " 30 00,	16,860 00
95		" 53 " " 25 00,	1,325 00
		" Interest allowed on past due Bonds, . .	1,415 00
	May 20,	By 373 past due coupons @ $30,	11,190 00
		" 62 " " " " $25,	1,550 00
		" 1 " " Bond,	100 00
		" Interest on 2 bonds due Jan. 1, '64, and on 1 bond due Jan. 1, '65,	1,150 00
	June 29,	" 11 bonds and interest,	12,815 00
96		" 459 past due coupons @ $30,	13,770 00
		" 66 " " " " 25,	1,650 00
		" 6 bonds and interest,	6,260 00
		" 529 past due coupons @ $30,	15,870 00
		" 2 " " " " 25,	50 00
	July 24,	" 225 " " " " 30,	6,750 00
	Aug. 15,	" 225 " " " " 30,	6,750 00

1873.				97
Jan. 4,	By Cash	- - -	1 60	
Feb. 10,	" past due coupons,	- -	31,930 00	
	" 21 Bonds,	- -	21,000 00	
Aug. 30,	" 25 "	- - -	25,000 00	
	" 781 coupons, @ $30,	-	23,430 00	
	" 100 " " 25,	-	2,500 00	
	" 44 " " 30,	-	1,320 00	
1874.				
M'ch 20,	" Coupons,	- -	52,010 00	
April 15,	" "	- - -	240 00	98
Aug. 18,	" "	- - -	4,050 00	
	" 6 New Series F'd'ng bonds,		6,000 00	
Sept. 30,	" 20 Registered bonds,	- -	20,000 00	
Nov. 6,	" 1,672 coupons @ $30,	- -	50,160 00	
Dec. 9,	" 73 bonds,	- - -	73,000 00	
24,	" 25 past due coupons,	- -	750 00	
1875.				
Jan. 14,	" Cash,	- - -	50,157 48	
1876.				
June 15,	" Coupons,	- -	14,550 00	99
July 11,	" " (July 1875,)	- -	6,450 00	
Sept. 7,	" " " "	- -	8,070 00	
1876.				
April 26,	" " (Jan'y, 1876,)	-	315 00	
June 15,	" " " "	-	17,400 00	
July 11,	" " " "	-	6,450 00	
Sept. 7,	" " " "	-	8,970 00	
12,	" Cash,	- - -	21,087 50	
Nov. 18,	" Coupons (Jany, 1876),	-	10,710 00	
Dec. 15,	" " " "	-	4,050 00	100
19,	" " " "	-	1,800 00	
1876.				
M'ch 14,	" 100 coupons (July, 1876),	-	3,000 00	
April 26,	" " " "	-	685 00	
June 15,	" " " "	-	14,370 00	
July 11,	" " " "	-	7,110 00	
Sept. 7,	" " " "	-	8,880 00	

101	Nov. 18,	By 100 coupons (July, 1876), -	10,710 00
	Dec. 15,	" " " " -	4,140 00
	19,	" " " " -	1,800 00
	1876.		
	Dec. 15,	" " (Jany, 1877), -	33,540 00
	19,	" " " " -	1,800 00
		" Balance to bond account, -	64,900 00
	1871.		
	Sept. 19,	" 1,335 coupons @ $30, - -	40,050 00
		" 18 " " 25, - -	450 00
102		" Error in calculations, -	1,480 25
			$945,960 83

EXHIBIT E[1]

To Jas. L. Gaines's Deposition.

STATEMENT BOND ACCOUNT, KNOXVILLE AND KENTUCKY RAILROAD CO. WITH THE STATE OF TENNESSEE.

103	1866,	Old Loans	$180,000 00
	Jany. 1,	Interest Funded . . .	43,200 00
	April 27,	250 Bonds, interest July, 1876	250,000 00
	July 23,	250 " " "	250,000 00
	1867.		
	Jany. 3,	120 " " July, 1877	20,000 00
	"	110 " " "	110,000 00
	Feb. 14,	100 " " "	100,000 00
	Mar. 2,	100 " " "	100,000 00
104	April 1,	300 " " "	300,000 00
	Oct. 8,	110 " " July, 1868	110,000 00
	1868.		
	Jany. 8,	150 " " "	150,000 00
	" 24,	350 " " "	350,000 00
	Feb. 24,	300 " " "	300,000 00
	1869.		
	Mar. 6,	130 " " Jan'y, 1869	130,000 00
			$2,393,200 00

STATEMENT INTEREST ACCOUNT—KNOXVILLE AND KENTUCKY RAILROAD CO. WITH THE STATE OF TENNESSEE. 105

1866.		
July 1, to interest	$14,196 00	
1867.		
Jan'y 1, "	21,686 00	
July 1, "	40,596 00	
1868.		
Jan'y 1, "	43,896 00	106
	$120,384 00	

PAYMENTS.

1866.		
June, By payment	14,196 00	
Dec. " "	21,696 00	
1867.		
Oct. 12, " "	40,596 00	
1868.		
Jan. 3, " "	20,000 00	107
Feb. 18, By "	20,000 00	
" 19, " "	3,896 00	
	$120,384 00	
July 1, To interest	67,896 00	
1869.		
Jan'y 1, " "	67,896 00	
July 1, " "	71,796 00	108
1870.		
Jan'y 1, " "	71,796 00	
July 1, " "	71,796 00	
	$351,180 00	

109 W. B. JOHNSON AND C. M. MCGHEE, *et al.*, Purchasers of the Knoxville & Kentucky Rail Road, in account with the State of Tennessee.

1871.		
Oct. 1,	To Purchase Knoxville & Kentucy R. R.	$350,000 00
1871.	PAYMENTS.	
Oct. 16,	By State Bonds	$80,000 00
" "	Coupons	75,000 00
110 1872.		
Oct. "	98 State Bonds . . .	98,000 00
" "	72 " . . .	72,000 00
1873.		
Apl. 12, "	12 " . . .	12,000 00
May 9, "	20 " . . .	20,000 00
May 24, "	9 " . . .	18,000 00
" 28, "	18 " . . .	9,000 00
June 3, "	22 " . . .	22,000 00
1874.		
111 May 4, "	1 " Jan. 1871 coupon	1,000 00
" 22, "	3 " July, 1874 "	2,479 33
Sept. 4, "	8 " Jan. 1871 "	8,000 00
" 24, "	Cash	20 67
		$350,000 00

112

EXHIBIT "F"

To Jas. L. Gaines' Deposition.

STATEMENT BOND ACCOUNT CINCINNATI, CUMBERLAND GAP AND CHARLESTON RAILROAD CO., WITH THE STATE OF TENNESSEE.

1866.			
	Old Loans, ...		$132,000 00
Jan'y 1,	Interest funded, . .		31,680 00
July 19,	100 Bonds, ...		100,000 00
Aug. 22,	122 "		122,000 00
Dec. 12,	100 "		100,000 00
1867.			
Feb. 21,	167 "		167,000 00
Sept. 25,	333 "		333,000 00
1868.			
Jan. 31,	100 " Interest from Jan. 1868,		100,000 00
" "	100 " " " "		100,000 00
May 1,	219 " " " "		219,000 00
			$1,404,680 00

STATEMENT INTEREST ACCOUNT CINCINNATI, CUMBERLAND GAP AND CHARLESTON RAILROAD CO., WITH THE STATE OF TENNESSEE.

1866.			
July 1,	By Interest, . .	$4,910 40	
1867.			
Jan'y 1,	" " . .	14,510 40	
July 1,	" " . .	29,570 40	
1868.			
Jan'y 1,	" " . .	29,570 40	
July 1,	" " . .	35,570 40	
	" " . .	6,570 00	
1869.			
Jan'y 1,	" " . .	42,140 40	
July 1,	" " . .	42,140 40	
1870.			
Jan'y 1,	" " . .	42,140 40	
July 1,	" " . .	42,140 40	
			$289,323 60

117	1867.		
	Jan'y 14, By Payment, . .	$19,480 80	
	June 28, " " . .	25,170 00	
	" 28, " " . .	2,670 00	
	1868.		
	Feb'y 14, " " . .	31,614 68	
	1871.		
	Feb'y 20, " " . .	435 82	
			79,371 30
118			$209,952 30

R. T. Wilson and C. M. McGhee, Purchasers of the Cincinnati, Cumberland Gap and Charleston Railroad, in Account with the State of Tennessee.

	1871.		
	Oct'r 16, To purchase Cincinnati, Cumberland Gap and Charleston		
119	Railroad, ...		$300,000 00

Payments.

	1871.		
	Oct'r 16, By State Bonds, .	$75,000 00	
	1872.		
	Oct'r 16, " 75 State Bonds,	75,000 00	
	1873.		
	Feb'y 3, " 159 " "	150,000 00	
			$300,000 00
120			

EXHIBIT G 121

To James L. Gaines' Deposition.

COMPTROLLER'S OFFICE,
NASHVILLE, Tenn., June 23, 1866.

A. Richardson, New York, has this day deposited in my office eight hundred past due coupons of the State of Tennesee, for thirty dollars each, and for dollars each, and amounting twenty-four thousand dollars, for which he is entitled to six per cent coupon bonds of the State, 122 under the Act passed November 23d, 1865.

S. W. HATCHETT,
Comptroller.

STATE OF TENNESSEE,)
Executive Department.)

$24,000.

No. 2,294 to No. 2,317.

Received of W. G. Brownlow, Governor of the 123 State of Tennessee, twenty-four of the six per cent. coupon bonds of the State, for one thousand dollars each, dated the 1st day of January, 1866, payable January 1st, 1892, and numbered from 2,294 to 2,317, inclusive. First coupons due 1st July, 1866. Said bonds are issued under the Act of November 23d, 1865, in lieu of that amount of past due coupons of the State, which are filed with Comptroller of the Treasury.

Given under my hand this 23d day of June, 1866. 124

A. RICHARDSON.

COMPTROLLER'S OFFICE,
NASHVILLE, Tenn., August 16, 1866.

Adams Express Co. has this day deposited in my office one thousand seven hundred and forty-five past due coupons of the State of Tennessee, for

125 thirty dollars each, and sixty-six for twenty-five dollars each, and

1,745 coupons @	$30.....	$52,350
66 " "	25.....	1,650
		$54,000

amounting to fifty four thousand dollars, for which he is entitled to six per cent. coupon bonds of the State under the Act passed November 23d, 1865.

126 S. W. HATCHETT,
Comptroller.

STATE OF TENNESSEE,
Executive Department.

$54,000.

No. 3,878 to No. 3,931.

Received of W. G. Brownlow, Governor of the State Tennessee, fifty-four (54) of the six per cent. coupon bonds of the State, for one thousand dollars
127 each, dated the 1st day of February, 1866, payable January 1st, 1892, and numbered from 3,878 to 3,-931, inclusive. First Coupons due 1st July, 1866. Said bonds are issued under the Act of November 23d, 1865, in lieu of that amount of past due coupons of the bonds of the State, which are filed with the Comptroller of the Treasury.

Given under my hand this 18th day of September, 1868.

AD. EX. CO.,
128 J. A. MCARTHUR, *Agent.*

COMPTROLLER'S OFFICE,
Nashville, Tenn., March 21st, 1867.

The People's Bank of Nashville has this day deposited in my office three hundred and thirty past-due coupons of the State of Tennessee, for thirty dollars each, and four for twenty-five dollars each;

330 coupons @ $30.00, . .	$9,900 00	129
4 " @ $25.00, . .	100 00	
	$10,000 00	

amounting ten thousand dollars for which he is entitled to six per cent. coupon bonds of the State, under the Act passed November 23d, 1865.

Comptroller.

STATE OF TENNESSEE, } 130
Executive Department. }

$10,000.

No. 4,542 to No. 4,551.

Received of W. G. Brownlow, Governor of the State of Tennessee, ten of the six per cent. coupon bonds of the State for one thousand dollars each, dated the 1st day of January, 1866, payable January 1st, 1892, and numbered from 4,542 to 4,551 inclusive; first coupon due 1st July, 1866. Said 131
bonds are issued under the Act of November 23d, 1865, in lieu of that amount of past due coupons of the State, which are filed with Comptroller of Treasury.

Given under my hand this 21st day of March, 1867.

PEOPLE'S BANK,
GEORGE HOLBROOK, Clk., *Agent.*

COMPTROLLER'S OFFICE, } 132
Nashville, Tenn., July 21st, 1870. }

The First National Bank of Nashville has this day deposited in my office thirty-two past due coupons of the State of Tennessee for thirty dollars each, and two past due coupons for twenty-five dollars each; and one certificate of indebtedness of G. W. Blackburn, Compt.,

133 for $2.08; amounting one thousand and twelve $\frac{08}{100}$ dollars, for which he is entitled to six per cent. coupon bonds of the State, under the Act passed November 23d, 1865.

ED. R. PENNEBAKER,
Comptroller.

STATE OF TENNESSEE,
Executive Department.

$1,000.

134 No. 4,920 to No. ....

Received D. W. C. Senter, Governor of the State of Tennessee, one of the six per cent. coupon bonds of the State for one thousand dollars each, dated the 1st day of January, 1866, payable January 1st, 1892, and numbered from 4,920 to —— inclusive; first coupons due 1st July, 1866. Said bonds are issued under the Act of November 23d, 1865, in lieu of that amount of past due coupons of the State,
135 which are filed with the Comptroller of the Treasury.

Given under my hand this 10th day of August, 1870.

T. COOLEY, for Agent,
Cash. 1 Nat. Bk.

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EXHIBIT H, 137

To Jas. L. Gaines' Deposition.

Statement showing amount of bonds issued by the State of Tennessee, in aid of different Railroad Companies, and what disposition has been made of the indebtedness to the State in case of the several Railroads.

SOLD BY COMMISSIONERS :

Edgefield & Kentucky R. R.		
Bonds issued (including $200,000 to E. H. N.)	$1,380,000 00	138
Interest funded, January 1, 1866,	231,812 00	
Interest unpaid, July 1, 1870,	365,220 00	
U. S. claims assumed,	130,804 58	$2,107,836 58
Sold August 26, 1861, for		900,000 00
Cin'ti, Cumb. Gap & Charleston R. R.		
Bonds issued,	153,000 00	
Interest unpaid,	142,068 12	1,615,061 12
Sold October 16, 1871, for		300,000 00
Knoxville & Kentucky R. R.		
Bonds issued,	2,350,000,00	
Interest unpaid,	394,380 00	744,380 00
Sold October 10, 1871, for		350,000 00
McMinville & Manchester R. R.		
Bonds issued,	772,000 00	
Interest unpaid,	294,037 00	1,066,037 00
Sold August 15, 1871, for		300,000 00
Nashville & Northwestern R. R.		
Bonds issued,	3,222,000 00	
Interest funded, January, 1866,	396,475 00	3,618,475 00
Balance interest unpaid, July, 1870,		817,725 00
Sold, October, 1871, for	2,400,000 00	
Rogersville & Jefferson R. R.		140
Bonds issued,	385,000 00	
Interest funded, January, 1866,	38,160 00	423,160 00
Interest unpaid, July, 1870,		96,158 00
Sold, March, 1872, for	23,000 00	
Winchester & Alabama R. R.		
Bonds issued,	1,289,000 00	
Interest funded, January, 1866,	143,259 00	1,432,259 00
Interest unpaid, July, 1870,		3,153 09
Sold, September, 1871,	300,000 00	

141	*Knoxville & Charleston R. R.*		
	Bonds issued,.....	710,000 00	
	Interest unpaid,.....	85,200 00	
	Sold, March 22, 1872, for.....		105,000 00
	East Tenn. & Western N. Car. R. R.		
	Bonds issued,.....	400,000 00	
	Interest unpaid,.....	36,000 00	
	Sold, November, 1871, for.....		20,000 00
	Memphis, Clarksville & Louisv. R. R.		
	Bonds issued,.....	1,582,000 00	
	Interest funded, January, 1866,.....	312,600 00	1,894,600 00
142	Interest unpaid		613,986 00
	U. S. claims assumed,.....		380,756 00
	Sold, September 28, 1871, for.....	1,700,000 00	
	Tennessee & Pacific R. R.		
	Bonds issued,.....	116,500 00	
	Interest unpaid, July, 1872, for.....	71,080 00	
	Sold, August 8, 1872,.....		300,000 00
	P. S.—Total bonds issued to Railroads,....	2,925,200 00	
	Of these bonds there have been cancelled about,.....	15,800,000 00	
	Leaving of the original issuance outstanding about, ...	14,250,000 00	
143			
	ROADS WHICH HAVE LIQUIDATED THEIR INDEBTEDNESS.		
	East Tennessee & Virginia R. R.		
	Bonds issued,.....	2,202,000 00	
	Interest funded, 1866,.....	250,038 55	
		2,452,038 55	
	Less sinking fund paid,.....	3,000 00	2,449,038 55
	East Tennessee & Georgia R. R.		
	Bonds issued,.....	1,614,000 00	
144	Interest funded, January, 1866,.....	180,277 50	
		1,794,277 50	
	Less amount sinking fund paid,.....	125,000 00	1,669,277 50
	Total indebtedness of the two above roads, paid August 1, 1870, by East Tennessee, Va. & Ga. R.R. Co. (consolidated),..		4,118,316 05
	Central Southern R. R.		
	Bonds issued,.....	566,000 00	
	Interest funded, January, 1866,.....	128,610 00	724,160 00

Tennessee & Alabama R. R.			145
Bonds issued,	1,069,000 00		
Interest funded, January, 1866,	225,019 00	1,294,016 00	
Nashville and Decatur R. R.			
Bonds issued,		350,000 00	
Total paid by the Nashville and Decatur R. R. Co., March, 1871,		2,368,176 00	
Memphis and Charleston R. R.			
Bonds issued,	1,700,000 00		
Interest funded, January, 1866,	185,387 45	1,885,387 45	
Less amount paid on sinking fund,		213,471 20	
			146
Balance paid, July 25, 1877,		1,671,916 25	
Memphis and Ohio R. R.			
Bonds issued,	2,001,000 00		
Interest funded, January, 1866,	395,110 00		
Paid, May 25, 1871,	2,396,110 00		
Mississippi and Tennessee R. R.			
Bonds issued,	398,000 00		
Interest funded, January, 1866,	22,800 00	420,800 00	
Less amount paid on sinking fund,		121,000 00	
			147
Balance paid, January 16, 1878,		299,800 00	
Mobile and Ohio R. R.			
Bonds issued,	1,296,000 00		
Interest funded January, 1866,	388,800 00		
Paid, January, 1866,	1,684,800 00		
Mississippi Central and Tennessee R. R.			
Bonds issued,	1,124,000 00		
Interest funded January, 1866,	75,180 00		
Paid December 1, 1877,	1,199,180 00		
			148
Nashville and Chattanooga R. R.			
Bonds issued,	395,000 00		
By sinking fund paid,	30,835 00		
Balance paid January 1, 1874,	364,165 00		

149 RECAPITULATION.

Defaulting railroads sold by the State Commissioners:		
Bonds issued,	14,628,000 00	
Interest funded January, 1866,	1,122,306 00	
Interest paid July, 1870,	3,331,163 12	
U. S. Government claims assumed,	371,560 00	
		10,593,029 12
Amount realized by sale of the above roads (sales bearing date July, 1870),		6,698,000 00
Roads which have settled their indebtedness:		
150 Bonds issued,	12,742,000 00	
Interest funded January, 1866,	1,850,768 00	
Sinking fund paid,	493,306 00	
Unaccounted for,	1,255,700 00	

STATE OF TENNESSEE,
Comptroller's Office.

I, JAS. L. GAINES, Comptroller of the Treasury of the State of Tennessee, do hereby certify that the foregoing is a correct statement, as shown by the records and books in this office.

151

Witness my official seal and signature
[L. S.] at Nashville, this 8th day of April, 1878.

JAMES L. GAINES,
Comptroller.

152

Deposition of H. L. Claiborne.

UNITED STATES CIRCUIT COURT,

DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement Bonds of Tennessee issued to the RAILROAD COMPANY,

versus

THE RAILROAD COMPANY.

Deposition of H. L. CLAIBORNE, witness for defendants, taken in Nashville, Tennessee, March 11th, 1880, before L. W. HUMES, Special Examiner, duly appointed under an order of the United States Circuit Court, Western District of Tennessee.

Taken pursuant to agreement.

Present, W. Y. C. HUMES, for defendants.

H. L. CLAIBORNE, being first duly sworn, deposed as follows:

I will be sixty-one years old in a few days; I have resided in Nashville, Tennessee, nearly all of sixty years, and reside there now; I was General Book-

5 keeper, acting also for several years as Assistant Cashier of the Bank of Tennessee, beginning in 1849, and continuing until 1853, when I resigned, and was afterwards (I think in 1858) elected again to the same position in the bank, and held the position until the bank was taken possession of by the Government (in April or May, 1865), except for the latter part of 1853 and the years 1854-5-6 and 7, and the early part of 1858 I held that position in the bank; the Bank of Tennessee was the fiscal
6 agent of the State of Tennessee from the passage of the General Internal Improvement Act, in 1851-2, of the General Assembly of the State of Tennessee; the funds of the State were deposited in the Bank of Tennessee and its branches, to the credit of the Treasurer of the State; the State had no other treasury to my knowledge; I do not think that the State Treasurer or other State officials had any *proper safe* or other means provided for the safe keeping of moneys of the State; I do not know of
7 the Treasurer of the State keeping funds in any other bank except the Bank of Tennessee, and branches of the same; it was the duty of tax collectors or any other persons having money, the revenue of the State, to pay the same to the Treasurer of the State, or into the Bank of Tennessee and branches designated by the State Treasurer, and to his credit; I know this fact as to the Bank of Tennessee and its branches, I cannot remember distinctly, after so
8 many years, but think where there was no branch of the Bank of Tennessee, the Treasurer might have directed tax collectors to pay into other banks most convenient to the official thus paying moneys; when this was done, I think the Treasurer generally, if not always, withdrew that deposit by depositing his checks or drafts on such outside banks with the Bank of Tennessee at Nashville, and the bank

would collect and credit the Treasurer of the State 9
with the amount so collected. All disbursements
from the State Treasury were made as follows:
The Comptroller of the State would issue his paya-
ble warrant on the Treasurer of the State, the Treas-
urer would then issue his check on the Bank of Ten-
nessee, which bank kept an account with him, cred-
iting him with all moneys received, and charging
him with all moneys paid out on his check. As to
the payment of interest of the railroad companies,
under the Internal Improvement Act of the State 10
of Tennessee, 1851-2, all railroad companies were
required to pay the interest on the amount of bonds
issued to them, into the Bank of Tennessee, fifteen
days before the coupons of the State for interest, at-
tached to the bonds, and due semi-annually, fell due.
The Bank of Tennessee was notified by the State
officials of the amount of interest due by each rail-
road Company, so that when the companies came to
settle their interest, the bank officials would know
what amount to receive from each railroad company. 11
The interest payments received semi-annually by
the Bank of Tennessee, from the several railroad
companies during my official connection with the
bank, were placed to the credit of an account called
"Railroad Companies for Interest," and the amount
was afterwards charged off and went to the credit
of the Treasurer of the State, subject to his checks,
like all other moneys of the State, from whatever
source derived; I have heretofore examined the
books of the Bank of Tennessee, and find that the 12
interest so paid in by the railroad companies was
sometimes during the term of office of another gen-
eral bookkeeper of the Bank of Tennessee (Mr. Geo.
W. Seay) serving as such when I was not employed
at the bank, placed to credit of the railroad com-
pany paying, but no account was kept, nor attempted
to be kept with or in respect of the holders of the

13 coupons of the State bonds issued to the respective railroad companies paying their interest to the State semi-annually, and no attemptwas ever made to my knowledge,and we had no data or information which would enable the bank to apply the interest so paid by the respective companies to the particular coupons of the bonds issued to the respective Companies making the payments. Two accounts of the East Tennessee and Virginia Railroad Company for interest are shown me, the accounts are correct, in
14 my handwriting, and I make them part of this deposition (marked A and B, respectively). There are receipts and bills rendered by the Bank to said Railroad Company at their respective dates, during my connection with the Bank as general bookkeeper. They are in my handwriting, and show the interest payments were made as so much interest owing by said Railroad Company to the State. The bills were rendered on that basis and receipted for accordingly. After the respective Railroad Com-
15 panies on the 15th of each June and December had so paid the amount of interest so due to the State of Tennessee by deposit in the Bank of Tennessee, the Railroad Companies had no further dealing, control or account of the interest so paid, but left the State to pay its own interest through the Bank, as its fiscal agent, to the creditors of the State. From 1849 up to the commencement of the war the State of Tennessee invariably paid promptly, as they fell due, all her obligations, and had ample
16 and readily attainable resources to do so. She never did, before the war, go to protest upon or permit to be dishonored or to remain unpaid at maturity any of her obligations, and no one thought of or contemplated the possibility of such a contingency happening so far as I know. The coupons were payable in the City of New York; the correspondent of the Bank of Tennessee in that city

was authorized by the bank to pay all coupons of 17
bonds of the State of Tennessee. The Merchants
Bank of New York was that correspondent, and
when they rendered accounts to Bank of Tennessee
would send coupons paid as vouchers of such
payment; the coupons were handed over by the
Bank of Tennessee to the State Treasurer, who
would issue his checks therefor, and his pass-book
with the bank was regularly balanced, all his checks
being handed to him when the pass-book was so
balanced, the checks being cancelled by the bank. 18
The railroad companies were the debtors to the
State for State bonds loaned them, and were re-
quired, as before stated, to pay the interest due by
them fifteen days before the coupons were payable
in New York by the State of Tennessee semi-an-
nually, As I have stated another bookkeeper of
the Bank of Tennessee (Mr. Geo. W. Seay), kept
separate accounts with the railroad companies for
interest paid by them to the State, but this course
of his amounted to the same thing, the accounts 19
were not kept so as to show the particular bonds
issued to any railroad company, or the interest on
any such particular bonds. The officials of the
Bank of Tennessee and the correspondent
Bank at New York did not and could not know the
coupons of bonds issued to any particular railroad
company; the coupons were paid indiscriminately, all
being paid as they were presented, and all being re-
turned to the treasurer of the State as received from
the bank which paid them. The Bank of Tennessee, 20
so far as I know, and I think I would have known
it, never knew the number of the bonds issued to
each particular railroad company; nor did the Bank
of Tennessee in any way act as the agent of any of
the railroad companies in paying interest for them,
on bonds issued to them, but the bank simply re-
ceived the amount of interest from the railroads as

provided by law, as before stated, fifteen days before the interest coupons fell due from the State. I know of no account kept by the Bank of Tennessee with the railroad companies except as before stated, and the bank could only officially know what amount of interest was due from any of the railroad companies by the information furnished by the State officials. The interest payments received by the bank from the various railroad companies were placed to the credit of an account called "Railroad Companies for Interest," or to the credit of the company paying, simply as a matter of convenient reference; it amounted to the same, however, as if directly carried to the credit of the State Treasurer, as all of these accounts had of necessity to appear in said Treasurer's account on the books of the bank of Tennessee when his account was balanced. The money paid was the State's money, as the State was liable for the coupons of all bonds issued by the State, whether to railroad companies or for any other purposes; as I have already stated, the bank paid as the fiscal agent of the State, and on its behalf, the interest on all the State bonds; the amount so paid was charged to the State (in the Treasurer's account) as so much paid for the account of the State. The State got credit on the books of the bank of Tennessee for all moneys paid into the bank, either by railroad companies or by other parties, and payments were made by the bank of Tennessee or by the correspondent of the bank, and all such payments were charged to the Treasurer of the State, and never charged to any of the railroad companies.

And further saith not.

H. L. CLAIBORNE.

Subscribed and sworn to before me, this March 11th, 1880.

L. W. HUMES,
Special Examiner.

EXHIBIT "A." 25

To H. L. Claiborne's Deposition.

EAST TENNESSEE & VIRGINIA R. R. Co.

WITH STATE OF TENNESSEE Dr.,

1859.

June 15—Interest on State Bonds due

Et prol'd..... 48,060

CR.,

June 11, Currency $2,452.90

Less ¼ of Ex, 6.13.. 2,446.77 26

13, New York exchange 22,645.00

Currency $55 less ¼%

Ex. $14..... 54.86

14 New York exchange 14,943.96

Currency $3,945 less

¼% Ex..... 9.56 3,935.14

15 New York exchange 4031.00

Specie for Balance... 3.27

——— 48060.00

H. L. CLAIBORNE. 27

Nashville, June 15, 1857.

G. B. K. Bank of Tennessee.

Endorsed.

"Bank of Tennessee Nashville,"

"$48,060."

(Other part of Exhibit "A." on next page.)

L. W. H.

Sp'l Ex'r.

28

1,066.

BANK OF TENNESSEE.

NASHVILLE, July 7th, 1859.

SAM'L B. CUNNINGHAM, ESQ., Prest.,
Jonesborough, T.,

Dear Sir :—I have yours of the 4th inst., is received. Below I give a full statement of the settlement E. T. & Va. R. R. interest, which you will find to be correct.

June 11,	Bank notes per express.....		$2,452 90
" 13,	"	$55.00	
"	958 Phenix bank, N. Y.	12,645.00	
	959 " "	10,000.00	
			22,700.00
" 14,	881 Bank of Republic, N. Y.....	14,443.96	
"	6,330 Merchant's bank N. Y. N. Y. ck....	500	
"	McMahanlas to Bank of T.....	2,500	
"	Bank Notes.....	1,445	
			18,888.96
" 15,	New York Exchange of Porterfield.....		4,031.00
			48,072.86
You owed interest.....			48,060.00
Balance Exchange on Currency paid by you.....			12.86

So you see the bank was correct in the settlement.

Very Respectfully yours,
H. L. CLAIBORNE,
for Cashier.

Endorsed :

"Bank of Tenn., Nashville."
"For Interest July 1, 1859."
"Entered June 30, 1859."

EXHIBIT "B." 33

"To H. L. Claiborne's Deposition."

THE EAST TENNESSEE & VIRGINIA R. R. Co.,
TO STATE OF TENNESSEE, DR.

Interest due 1st July, on 1,602 State Bonds	$48,060.00
¼ o/o Exchange on Currency	16.80
	$48,076.80

34

CREDITS:

American Exchange Bank	$530.95
Bank of the Republic	6,000.00
Phenix Bank	25,000.00
Bank of New York	10,000.00
Bill on N. Y., $5,000 less discount $75	4,925.00
Leaving for balance	1,620.85
	$48,076.80

35

Nashville, 15th June, 1860.

H. L. CLAIBORNE, G. B. K.,
Bank of Tennessee.

Endorsed:

"Rec't."
"Bank of Tenn."
"for Int. July 1, 1865."

36

1,068.

Deposition of G. W. Seay.

1

UNITED STATES CIRCUIT COURT,

DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement Bonds of Tennessee, issued to the RAILROAD COMPANY,

versus

THE RAILROAD COMPANY.

2

Deposition of G. W. SEAY, witness for defendants, taken in Nashville, Tennessee, March 11th, 1880, before L. W. HUMES, Special Examiner, duly appointed under an order of the United States Circuit Court, Western District of Tennessee. 3

Taken pursuant to agreement.

Present—W. Y. C. HUMES, *for defendants.*

G. W. SEAY, being first duly sworn, deposed as follows: 4

My name is George Whorton Seay; I was fifty-two (52) years old my last birth day; I have lived in and near Nashville since May, 1866—from boy-

hood; I lived in Nashville with but one or two short intervals up to October, 1858, at which time I moved to Columbia, Tennessee; from January, 1854, as I now recollect, up to October, 1858, I was general bookkeeper of the Bank of Tennessee, at Nashville, succeeding H. L. Claiborne in 1854, and succeeded by him in October, 1858; during that period the Bank of Tennessee was the sole fiscal agent of the State of Tennessee, and all the funds of the State were or ought to have been deposited in said Bank. If the State officials had any safe or other means to keep their money secure; it was, I presume, merely a temporary place preparatory to making regular deposits in the bank; if a tax collector had money deposited in a branch bank, I suppose he would have deposited it in such branch bank temporarily at his own credit, awaiting the time when he would pay it over to the State Treasurer, accompanied by a receiving warrant from the Comptroller, but of this I have no knowledge as payments were made to the Treasurer on a receiving warrant from the Comptroller, the treasurer taking up the Comptroller's paying warrant and issuing therefor to the parties presenting same, his checks on the Bank of Tennessee; I have examined some (possibly all) the accounts kept with the railroad companies of the State which had received the State bonds; I find that I adopted a different plan, but with the same view as my predecessor. He kept his receipts from railroads as "Railroad Companies for Interest on State Bonds," and I kept the accounts with the different railroads separately. My reason for this change was on account of the frequent partial payments made by those companies, and the difficulty in stating the unpaid balances due from those companies if the account had been kept up as it had been commenced by my predecessor under the heading of "Railroad

Companies for Interest," &c. The moneys thus 9
paid, whether to credit of the account headed "Rail-
road Companies for Interest," &c., or to credit of
separate railroads, as kept by myself, was merely
kept temporarily so until the amounts due by each
railroad had been fully provided, and then passed
to credit of the Treasurer of Tennessee. The keep-
ing of the accounts by myself separately for the
different railroads was not provided for the pay-
ment of any specific bonds, but for the payment of
so much interest due the State by the railroad com- 10
panies. The Bank of Tennessee did not keep any
account of the separate and particular bonds issued
any railroad company, and as an officer of the bank
I did not know and was never furnished with any
list of such loans made by the State to the railroad
companies, but simply furnished with a list of the
several amounts of interest due the State by the
companies who had received the loan of bonds from
the State. The bank acted in no other way towards
such railroad companies than as the depositary of 11
such companies for credit of the Treasurer of the
State in the manner before stated. As fiscal agent
of the State the Bank of Tennessee paid, or caused
to be paid by its correspondent in New York, all
the coupons from the State bonds, for whatever
purpose issued, and never charged the payment of
a single coupon to any railroad whatever. The in-
terest so paid was charged to the Treasurer of the
State directly by the Bank of Tennessee.

And further saith not. 12

G. W. SEAY.

Subscribed and sworn to before me, this March 11th, 1880.

L. W. HUMES,
Special Examiner.

1,072.

1

Deposition of Jas. D. Porter.

UNITED STATES CIRCUIT COURT,

DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS *et al.*, on Behalf of the Holders of Internal Improvement Bonds of Tennessee, Issued to the RAILROAD COMPANY

versus

THE RAILROAD COMPANY *et al.*

2

Deposition of JAS. D. PORTER, witness for defendants, taken in Paris, Tennessee, March 9th, 1880, before L. W. HUMES, Special Examiner, duly appointed under an order of the United States Circuit Court, Western District of Tennessee. 3

Taken pursuant to agreement.

Present—W. Y. C. HUMES, *for Defendants.*

JAS. D. PORTER, being first duly sworn, deposed as follows: 4

I am a resident of Paris, Tennessee, and have been all of my life; I am 50 years old; I was Governor of the State of Tennessee twice, covering the years 1875–6–7 and '8.

5 The leading thought of my administration was an adjustment of the State debt.

After the State defaulted in the payment of the interest, I saw that it was impossible to pay the interest out of the revenues of the State according to the assessment existing at that time; about this time I received this communication (which I make Exhibit "A" to this my deposition), and I communicated it to the legislature in my biennial message of January, 1877; the legislature did send the com-
6 mission to New York in answer to my recommendation, and they met a committee of arbiters appointed at a meeting held at the clearing house in 1877, a meeting held and controlled by the bondholders of Southern State bonds and held in the interest of these bondholders; after a discussion between this committee of arbiters and this Tennessee commission, the Court of Arbitration recommended a settlement of the debt of the State of Tennessee by the issuance of new bonds at the rate of 60% of the total
7 amount; these New York arbiters in their communication to me stated that this settlement would be just to the bondholders and honorable to the State; the legislature adjourned for the want of time without considering their recommendation; in the autumn following, I put myself in communication with some of the leading bondholders to know if they would accept the recommendation of that arbitration; they were generally favorable to it; I therefore called the legislature together in extra
8 session the 5th of December, 1877, and submitted a message of that date to them in which I warmly urged that settlement; I submit the message and the accompanying documents as a part of this my deposition, and as Exhibit B. hereto; the originals of the letters in my message, Exhibit B hereto, I do not know where they are, they are not in my possession, but I do know they are true and accu-

rate copies, as I compared the proof with the original before I sent the message to the legislature; I am satisfied I sent the original letters to the printer with the manuscript of the message; I did this because I did not consider them matters to be preserved after I had them printed in the message. 9

After the legislature had spent some days in wrangling, they were about to adjourn without doing anything as to the State debt, and I felt that I had done my duty and would let them go, but just at this time I received the telegram, Exhibit No. 2, to Calvin Amory Stevens' deposition, and upon the receipt of this telegram, I at once convened the legislature and sent them a second message; that telegram alone induced me to convene the legislature, and but for it I would not have convened them in the second extra session; it had been suggested to me on the day before, but I yielded to Stevens' telegram because I knew from the books he was a large bondholder, and I believed from his telegram he expressed the sentiments of most of the bondholders. 10 11

Neither B. F. Wilson, R. T. Wilson or C. M. McGhee had, nor attempted to exercise, the slightest influence upon my conduct to bring about a settlement of the State debt through the Legislature, nor made any effort to do so, except that on the 10th of December, 1877, B. F. Wilson handed me a telegram from his brother, R. T. Wilson, in which R. T. Wilson said his house held or represented some Tennessee bonds, and that they were willing to accept that compromise of 50 cents on the dollar. 12

I am satisfied my first communication after the meeting of the New York arbitrators was with Messrs. E. D. Morgan & Co. I wrote them because of the high standing and character of Governor Morgan, and I knew he had a controlling influence among the bondholders of the State, and I communicated

13 with them often on this subject. As will be seen from the letter of July 7, 1877, from Messrs. E. D. Morgan & Co., Exhibit B to my deposition, I had written to them June 29th, 1877, asking if a settlement of the State debt as proposed on the basis of the New York arbiters would be acceptable to the bondholders, and in their reply they say they will consult the bondholders they represent, and write. And they did, as will be seen from their letter to me of October 19th, 1877, in Exhibit B to my depo-
14 sition hereto.

I had personal interviews with Mr. Peter Geddes in reference to the compromise of the State debt both in New York and Nashville. While he was in Nashville he was in consultation with other gentlemen and myself, who were friendly to and urging the compromise of the State debt. I did not have a doubt of the validity of the debt, and the absolute and entire liability of the State to pay it, and my efforts to bring about an adjustment did
15 not have the slightest reference to the railroads or a single railroad interest; nor was my action influenced by any opinion that in any contingency were they liable for it, or any part of it. And in all of my correspondence with the bondholders no one of them ever intimated a contrary opinion.

The financial condition of the Memphis and Charleston Railroad Company during my administration was so deplorable that I really feared the State would lose the debt due from the road. The
16 company was about to default in the payment of the interest on its debt, and its officers came to me and told me before the interest fell due, that they could not meet it, and asked me if I would put a State Receiver in charge if they defaulted. I told them that I would—that I would treat them as I had others. They told me the road would settle the entire debt under the Act of 1869–70 if let alone. I

did not think it could, and told the officers of the 17
road that if they wanted to hold it they must put up a guarantee for the defaulted interest and they did put United States bonds, and I held them as indemnity for the defaulted interest until the road finally paid its entire bonded debt; although they repeatedly applied to me to relinquish the indemnity so as to enable them to buy bonds and pay off the bonded debt, but this I refused to do, and held the indemnity until they settled the entire bonded debt. 18

During my administration the Mississippi Central Railroad defaulted, and I at once put it into possession of the State Receiver, under the Act of 1851–2, and I so held the road from Kentucky to the Mississippi line until the purchasers paid off the entire bonded debt of the road under the Act of 1869–70, and I refused from time to time applications from the Receiver of the United States Court, holding for the mortgagees, to pay the defaulted interest, and I told him I would not release the road un- 19
til the entire bond debt due from it to the State was paid, and I so notified the purchasers before their purchase of the road under the decree of the United States Court, that I would give no one charge of the road until its entire bond debt was paid, and I held it until they came up and paid it under the Act of 1869–70. Under the Internal Improvement Act the stockholders, upon the payment of the defaulted interest, were entitled to the management of the road, and I know the purchasers had no such right under 20
the law, and I used this power to coerce from them the payment of the entire bond debt under the Act of 1869–70. The Mississippi and Tennessee Railroad during my administration settled their bond debt under the Act of 1869–70. Legal proceedings on behalf of the State had been begun before I was Governor for the sale of the deliquent roads, the

Knoxville and Charleston and Tennessee and Pacific, the sales of these two roads were perfected during my administration under the Act of 1869–70, the payments for them were received by me and the possession of the roads delivered to the purchasers. The interest collected and paid over by the Receiver of the Mississippi Central Road passed into the treasury as ordinary revenue. No claim was ever made by the holders of coupons of the bonds issued to that road for the interest collected by my Receiver. I am a lawyer by profession; I was elected Judge of the 12th Judicial Circuit at the regular election in 1870, for the full term of eight years, and I resigned after a service of 3½ years.

I have never had the slightest interest in or connection with any railroad, except as Governor of the State and representing her interest I have on the hustings a hundred times told the people I believed they were liable for the whole debt and ought to pay it. And I have never advocated the payment of less than that except where I believed it was best for the creditor and he was willing to take it. And in all of my recommendations to the Legislature to pay less, it was where the propositions came from the bondholders. And in my biennial message to the Legislature just as I retired from the office, I told them I believed it would be best for the people to shoulder and pay the entire debt; said passage of said message is hereto made, Exhibit "C."—And further saith not.

JAS. D. PORTER.

Subscribed and sworn to before me, March 9th, 1880.

L. W. HUMES,
Special Examiner.

EXHIBIT "A." 25

To Jas. D. Porter's Deposition.

NEW YORK, December, 1877.

To His Excellency, JAMES D. PORTER, Governor of Tennessee :

SIR: The undersigned holders of bonds of the State of Tennessee, believing that the best interests of Tennessee, and of her public creditors, will be served by an early permanent adjustment of the claims of such creditors on a basis honorable to the 26 State and equitable to them, respectfully ask your Excellency, in the full belief that such a settlement is practicable, to recommend that the Legislature of Tennessee, as early as may be possible at its ensuing session, appoint a commission to come to this city, and confer with the holders of bonds of the State of Tennessee, for the purposes mentioned herein.

We remain your Excellency's most obedient servants. 27

GEO. SMITH, London, England,
by GEDDES & SMITH, agents, &c.
BROWN BROTHERS & Co., agents.
DREXEL, MORGAN & Co.,
E. D. MORGAN & Co.,
WARD, CAMPBELL & Co.,
JAMES G. KING'S SONS,
Agents for holders.
GEORGE W. STANTON,
P. GEDDES. 28

29

EXHIBIT B

To Jas. D. Porter's Deposition.

Governor's Message.

MESSAGE

of

Governor Jas. D. Porter

30

to the

FORTIETH GENERAL ASSEMBLY

of the

STATE OF TENNESSEE.

FIRST EXTRA SESSION.

December 5, 1877.

31

NASHVILLE, TENNESSEE.

PRINTED AT "THE AMERICAN" BOOK AND JOB ROOMS.

1877.

GOVERNOR'S MESSAGE.

32

Gentlemen of the Senate and House of Representatives:

I have convened the General Assembly in extraordinary session for the purpose of considering the following recommendation to adjust the State debt: "*That after adding the arrears of interest the*

aggregate amount of the State debt should be readjusted by the issue of new bonds at the rate of sixty per cent. of the total amount; i. e., *for every sum of one thousand dollars, new bonds should be given in exchange and full settlement for six hundred dollars, or for proportionate amounts, the new bonds to carry six per cent., payable semi-annually in the city of New York, the principal payable in thirty years, the interest coupons to be received by the State for all taxes.*"

This is the recommendation made by a Committee of Arbiters, appointed at a meeting of citizens held at the Clearing House in New York City, in January, 1877, after a conference with the delegation appointed by the General Assembly. On the 22d of February, 1877, in a special message, I urged the General Assembly to send this committee of conference, and recommended that all questions touching the State debt "be postponed to await the action of the arbiters," and announced that if this policy was adopted, "and if time becomes essential I will not hesitate to convene the General Assembly in extraordinary session."

On the 19th of March, 1877, the Legislative Committee reported to the General Assembly the result of the conference; seven days thereafter the two Houses adjourned without taking action upon this report. Under the circumstances mentioned, I have recognized it as my duty to call you from your homes to consider this recommendation, and to respectfully and earnestly recommend its adoption.

Since the adjournment of the General Assembly, the debts due from the Memphis & Charleston and Mississippi Central Railroads have been paid; deducting the sum of $299,814, the amount of the debt of the Mississippi and Tennessee Railroad, not due, and for which the State has ample security, the debt of the State on the first of January, 1878,

will amount to $23,212,606; this includes the bonded debt not due, the bonded debt past due, five full installments of interest, and balances of several installments not presented, amounting to $40,000. The greater part of this debt was incurred prior to 1861. The following table exhibits the amount issued since the late war between the States, the amount canceled and the amount now outstanding:

	Regist'd and not canceled.	Regist'd and canceled.	Canceled before Registration.	East Tennessee Univ'ity.	Mineral Home.	Unaccounted for.	Total.
Green, no letter	2388	321	7021	113	120	37	10,000
" "B"..	645	114	4283	100	....	61	5,203
" "C"..	598	60	1401	2	...	139	2,200
White, "D"..	2416	429	2006	37	....	53	4,941
Grand Total...	6047	924	14711	252	120	290	22,344

The first series, Green, no letter, were issued under the Act of 1851–2, and amendments, $9,593,000 issued to railroads and turnpikes, and $407,000 were renewals of bonds past due. The second series, Green "B," were issued under authority of the Act of 1851–2, $290,000 were renewals for past due bonds, the balance issued to railroads and turnpikes. The third series, Green "C," and fourth series, White "D," issued under Acts of 1866 and 1868, were for past due interest, and known as Funding Bonds. This table shows that there are now outstanding $3,033,009 of the bonds popularly known as "Brownlow Bonds."

The debt is accumulating at the rate of four thousand dollars per day, and if the present condition of affairs continue, it is an easy calculation

to determine how soon the debt will gain volume 41
enough to destroy the prosperity of the State and bring discredit upon all of its citizens.

THE VALIDITY OF THE DEBT.

No question can now arise as to the validity of the public debt with the exception of the inconsiderable amount issued to Mineral Home Railroad, which has been declared fraudulent; the people of Tennessee, through their representatives, have in the most formal and solemn manner recognized it 42
by the bonds of any series being declared receivable in payment of the purchase money for delinquent railroads. It was again recognized by the funding act of 1873, by which the obligation of the State was renewed by paying interest on the entire debt and the principal at maturity, and the validity of the several series of bonds have been recognized by the 39th and 40th General Assembly by being declared receivable in discharge of debts due to the State, and I assume that no judicial tribunal would 43
now pronounce against the funded and registered bonds.

But the New York arbiters say in the report made to the General Assembly, after a full discussion with the legislative committee, "when all the circumstances under which the debt was incurred, the peculiar condition of affairs in the State, together with its present ability and its future resources," that the compromise recommended by them is "just and fair both to debtor and to creditor." 44
The adoption of this recommendation of a tribunal so disinterested and distinguished without consulting the holders of our bonds, would relieve the State of the suspicion of unfairness or of the charge of repudiating an acknowledged liability. But such a number of the bondholders have signified their willingness to accept the terms of the adjustment as

45 to satisfy me that if it is made it will be generally acceptable. I transmit the proposition of the bondholders. The terms are liberal to the State, the creditors voluntarily make the suggestion, and it is consistent with the dignity of the State to accept the abatement. The financial condition of the State is the only barrier to immediate prosperity. Its greatest want is capital and immigration. Both will avoid us unless the public debt is provided for. Men do not buy where the tenure of property is in-
46 secure, or where public obligations are disregarded. One of the highest duties of the citizen is the maintenance of the public credit; without it little is left worthy of public preservation.

THE ABILITY OF THE STATE.

There is to my mind no question as to the ability of the State to meet the interest on the debt, if adjusted upon the terms offered by its creditors. The present assessed value of the property of the State
47 is $236,000,000, and is an unusually liberal one to the tax-payer. Tennessee contributes to the markets of the world, with her cotton, grain and tobacco as largely, and is as rich in soil, minerals and productions as any State in the Union. The value of the principal crops raised in Tennessee during the year 1876, amounted to $47,126,310, not less than one-third of which was surplus. The productions of the State of Kentucky for the same period was $2,-687,560 less. Tennessee produced seventeen millions
48 more than Virginia, three millions more than Georgia, more than Maryland and South Carolina combined, more than Alabama and Florida, and seventeen million more than North Carolina, while the difference in population is in favor of Kentucky and Georgia, and Maryland and South Carolina combined. The productions of the State for the year 1877 amounted to over $52,000,000, with an

increase surplus of cotton, wheat and tobacco, 49
and the value of farm products is greater per capita in Tennessee than it is in any of the States named, and greater, according to the last census report, than it is in the rich States of New York, Pennsylvania and Missouri. There are other productions of the State, cattle, mules, horses, sheep, bacon, fruit, marble, iron, from which large revenues are derived, with an increasing area and capacity for productions.

The bonds of the State were issued for purposes 50
of internal improvement, very many of them were sold above par, and are now held by the original purchasers, by educational and charitable institutions; among the latter class is the Peabody Institute, at Baltimore, Maryland, which has signified through the proper officer a willingness to accept the terms of the proposed adjustment; the greatest American philanthropist, George Peabody, left as part of the endowment to this Institute that bears his name, $364,000 in bonds of the State of Ten- 51
nessee. Since 1868 the children of Tennessee have received from the Peabody Trust Fund, for their education, the sum of $191,650, and for the year 1878, an appropriation that will make it exceed $200,000. The State of Tennessee cannot, in my opinion, accept this abatement, or that proposed by the holders of bonds issued for the erection of the Capitol, those held by educational institutions, by charities, or by persons whose guardians made the investment in pursuance of our statute authorizing 52
the investment of the estate of minors in the bonds of the State.

If the adjustment recommended is adopted, I recommend that the new bond shall bear date July the first, 1878, to carry interest from that date: provision for a Sinking Fund can with propriety be postponed, but in case of a surplus in the Treasury

after liquidating the appropriations made by law, it would be well to provide for its investment in the bonds of the State, and in this way inaugurate a system for the gradual extinguishment of the principal of the debt.

THE COLLECTION OF THE REVENUE.

The Comptroller of the Treasury, in his biennial report to the General Assembly, states that "it is believed that the compensation allowed Trustees is inadequate to the labor and responsibility of the office, especially in the smaller counties where there is little or no municipal taxes to be collected;" experience has confirmed the wisdom of this recommendation; in one of the counties of the State there is no collector, no one being willing to accept the office for the compensation allowed by law; in several others resignations have been tendered. The revenue cannot be efficiently collected in the smaller counties for an inadequate compensation, and I recommend such an amendment to the statute as will secure this result.

It will be necessary to provide by law for the expenses of this extraordinary session of the General Assembly.

CONCLUSION.

The gravity of the question submitted to you will, I doubt not, command your most deliberate consideration; counselling wisdom and calmness in its discussion, I leave it with you, in the confident belief that your action will be controlled by your convictions of duty to your constituents.

JAMES D. PORTER.

DOCUMENTS 57

ACCOMPANYING THE

GOVERNOR'S MESSAGE.

LETTER FROM JOHN B. MANNING, NEW YORK.

NEW YORK, November 1, 1877.

To his Excellency, JAS. PORTER, 58
Governor of Tennessee:

I am authorized on behalf of a large number of Tennessee bondholders to submit proposition of compromise by accepting sixty cents on the dollar for bonds and past due coupons, payable in new six per cent. consols, and ask you to convene the Legislature to carry out the compromise.

JOHN B. MANNING.

(Represents $2,000,000.) 59

LETTER FROM A. R. HALL, HUNTINGDON, TENN.

HUNTINGDON, TENN., November 23d, 1877.

Governor JAMES D. PORTER:

Sir: Since writing you yesterday I notice that the terms of my proposition differ somewhat from those contained in your proclamation. In order 60
that not the least obstacle may be thrown in the way of settlement, I am willing to accept the terms put forth in your proclamation.

Very respectfully,

A. R. HALL.

61 LETTER FROM G. W. NORTON & CO., LOUISVILLE, KENTUCKY.

LOUISVILLE, KY., October 27, 1877.

JAMES L. GAINES, Esq., *Comptroller*,
Nashville, Tenn.:

Dear Sir: Your favor of 25th inst. is received and noted. As stated in ours of 24th inst., the members of this firm have held and owned Tennessee State bonds for more than twenty years, having faith
62 in them as a safe and good investment. The Clearing House Committee of New York, Geo. S. Coe, Esq., Chairman, recommended an adjustment of the State debt of Tennessee by issuing a new six per cent. bond, with coupons receivable for all taxes and dues to the State, to the extent of sixty per cent. of the principal and accrued interest of the present outstanding State bonds, and if the Tennessee Legislature would certainly adopt this plan of adjustment, without any modification whatever,
63 we would be willing to accept it, as far as we are concerned, and, as stated in ours of the 24th inst., we believe it would be generally accepted by the bondholders if promptly offered, but in our opinion, the bondholders would not accept any less than this. If the Legislature will certainly adopt the Coe recommendation, then we should be pleased to see an early called session of the Legislature. We have no objection to you placing this letter and ours of the 24th inst., in the hands of Governor Porter, as sug-
64 gested by you. Truly respectfully,

G W. NORTON & CO.

69 taxes and all other dues to the State, at the rate of 60 per cent. for the present bonds and past due coupons, in accordance with the terms of the award of the Committee of Arbitration, on the debts of the Southern States, provided the law is passed before the first of February next. The undersigned therefore respectfully request Your Excellency to convene the Legislature in extra session, and submit this proposition to it.

70 With much respect, we beg to remain

Your obedient servants,

G. W. STANTON, JR.
E. D. MORGAN & CO.

LETTER FROM BONDHOLDERS OF BALTI-
71 ## MORE.

BALTIMORE, October 19, 1877.

To His Excellency JAMES D. PORTER,
Governor of Tennessee:

Sir: The undersigned owners and representatives of holders of bonds of the State of Tennessee, beg to inform you that they are willing to accept new bonds of the State, having thirty years to run,
72 bearing 6 per cent. interest, payable semi-annually in the city of New York; coupons to be receivable for taxes and all other dues to the State, at the rate of 60 per cent. for the present bonds and past due coupons, in accordance with the terms of the award of the Committee of Arbitration on the debts of the Southern States.

The undersigned, therefore, respectfully request

LETTER FROM EUGENE KELLY, NEW YORK.

NEW YORK, October 19, 1877.

To his Excellency, JAMES D. PORTER,
Governor of Tennessee:

Sir: The undersigned owners and representatives of holders of bonds of the State of Tennessee, beg to inform you that they are willing to accept new bonds of the State, having thirty years to run, bearing six per cent. interest, payable semi-annually in the city of New York, coupons to be receivable for taxes and all other dues to the State, at the rate of sixty per cent. for the present bonds and past due coupons, in accordance with the terms of the award of the Committee of Arbitration on the debts of the Southern States.

The undersigned, therefore, respectfully request Your Excellency to convene the Legislature in extra session, and submit this proposition to it.

With much respect, we beg to remain

Your obedient servants,

EUGENE KELLY.

(Holds $297,000.)

LETTER FROM W. G. STANTON, JR., AND E. D. MORGAN & CO. NEW YORK.

NEW YORK, October 19, 1877.

To His Excellency JAS. D. PORTER,
Governor of Tennessee:

Sir: The undersigned owners and representatives of holders of bonds of the State of Tennessee beg to inform you that they are willing to accept new bonds of the State having thirty years to run, bearing 6 per cent. interest, payable semi-annually in the city of New York; coupons to be receivable for

Your Excellency to convene the Legislature in extra session, and submit this proposition to it. 73

With much respect, we beg to remain

Your obedient servants,

($444,700.) WILLIAM McKIM,
President of the Peabody Institute, Baltimore.
JOHN BOLGIANO,
SAMUEL L. PETERS,
FRANCIS WHITE,
JOSEPH H. RIEMAN, 74
A. RIEMAN,
THOS. WILSON,
A. D. O'LEARY,
DANIEL H. SHRIVER,
BENJ. W. BENNETT,
By D. H. Shriver.
JOHN CUSHING,
EDW. K. SCHAEFFER,
FRANCIS A. CROOK,
Treasurer of the Baltimore Equitable Society. 75
FRANCIS A. CROOK.

LETTER FROM E. D. MORGAN & CO., NEW YORK.

NEW YORK, July 7, 1877.

To His Excellency, Gov. JAS. D. PORTER,
Nashville, Tenn.: 76

Dear Sir: Your favor of the 29th ult., addressed to Messrs. Geddes & Smith and ourselves, has been received, advising that you propose to convene the General Assembly after the new assessment has been completed, in November, for the purpose of adjusting your State debt.

You ask if a settlement upon the basis proposed

77 by the Arbiters in March last will be acceptable to the bondholders, and desire us to confer with them and advise you. We will communicate with you later on, after learning the views of the foreign holders whom we represent, as also of some of the larger holders here.

We are told that it is represented in Tennessee that large amounts of your State bonds are held by parties who bought at late current prices. We beileve that very few are so held. Our observation
78 leads us to believe that nearly all the bonds which the necessities or fears of holders have forced to sale of late years have been absorbed by your railroads for settlement with the State. We find them generally held by original investors, who believe that your State will in the end pay them, principal and interest.

Very respectfully,

E. D. MORGAN & CO.

79

EXHIBIT C,

To Jas. D. Porter's Deposition.

The Public Debt.

The State has issued 49,393 bonds, amounting to $49,173,316.66; the number cancelled is 28,385, amounting to $28,163,016.66; the number now out-
80 standing as a liability against the State is 20,219, amounting to $20,221,300. In ten years the State has paid three installments of interest, seven are past due, amounting, after deducting $149,050 paid to educational and charitable institutions, to $4,052,-717, making a debt of principal and interest of $24,274,000.17. The settlement of this debt is paramount to all questions of legislation that can en-

gage the attention of the General Assembly; it in- 81
volves the honor and good name of the State, the credit and honor of every one of its citizens; it is a liability that was voluntarily contracted, and whether it was wisely created or not, cannot now be questioned. I hold, and have always believed, that in the light of moral and legal duty, as a question of commercial honor and of State pride, the best settlement of the debt for Tennessee would be to pay the entire debt according to the terms of the contract; this would be a heavy burden, but when 82
it became oppressive a temporary suspension of the interest payment could be made, and with a return of prosperity, with a moderate increase of population, and a reasonable development of our resources, now in full fruition, the whole debt could be paid without serious embarrassment to any one. But the creditors themselves have relieved the State of the necessity of providing of the entire debt by offering such an abatement of the principal as to bring its payment within the ability of the State 83
without making it burdensome. In December, 1877, certain creditors of the State proposed to adjust that part of the debt held by themselves upon a basis of fifty cents for principal and past due interest, and offered assurances that the great body of the creditors would accept the same terms; this proposition was submitted to an extra session of the Fortieth General Assembly, and its passage earnestly recommended. I am satisfied that the creditors making this proposition would still make 84
the adjustment; settled at fifty cents the debt would amount to $12,137,000, the annual interest upon this sum, at six per cent., would amount to $728,220. I do not hesitate to again urge the acceptance of this proposition.

1,094.

1

Deposition of Wm. Morrow.

UNITED STATES CIRCUIT COURT,

DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement Bonds of Tennessee issued to the RAILROAD COMPANY,

versus

THE RAILROAD COMPANY *et al.*

2

3 Deposition of WM. MORROW, witness for defendants, taken in Nashville, Tennessee, March 11th, 1880, before L. W. HUMES, Special Examiner, duly appointed under an order of the United States Circuit—Western District of Tennessee.

Taken pursuant to agreement.

Present—W. Y. C. HUMES, *for Defendants.*

4 WM. MORROW, being first duly sworn, deposed as follows:

1 Q. State your name, age and place of residence? How long and during what period of time

5 were you the Treasurer of the State of Tennessee? A witness in this case, John T. Terry of the firm of E. D. Morgan & Co., of New York City, in answer to interrogatory 29th on the 8th page of his printed deposition asking him: "When his firm of E. D. Morgan & Co. and himself became the owners of Tennessee bonds, was he not aware that they were liens upon railroads in this State?" says: "We "were so informed by the Treasurer of the State "of Tennessee in our office"; and in answer to the
6 39th cross-interrogatory on page 10, asking him, "who was the Tennessee treasurer with whom you "(he) had the conversation in his office, and when "was it?" Answered: "My impression is his "name was Morrow, and he had some Tennessee "bonds for sale; this was previous to 1873, to "the best of my recollection; it was since the war." Now please state whether you had the conversation with John T. Terry he has related, or told him the State bonds issued to railroads were first mortgage
7 liens upon the railroads in this State? Did you have any Tennessee bonds for sale in 1873, or prior or subsequent to that date, or ever inform Terry so? Were you ever in the office of E. D. Morgan & Co., of New York? if yea, at what date were you in their office? Were you ever in their office or have a conversation with any member of that firm before that date? Were you in New York City in 1873; at all?

A. Name, William Morrow; age, forty-one, resi-
8 dence, Nashville, Tennessee; I was State Treasurer of Tennessee from June, 1st, 1870, up to February 5th, 1877; it was during the month of November or December 1874, in December I think that I first met Gov. E. D. Morgan of firm of Morgan & Co., and the place I think was in the Fourth National Bank of New York; I state that according to the best of my recollection; I never met Mr.

Terry, and was not at the banking house of E. D. 9
Morgan & Co.; that I never told him State bonds were a lien, but I state without doubt I never informed him I had Tennessee bonds for sale, for the reason I never bought or sold directly or indirectly any Tennessee bonds, save a few bought as my part of the purchase money of the Knoxville & Charleston Rail Road, and paid to the State of Tennessee; there must be some confusion of persons and dates in the mind of Mr. Terry; at the time above referred to, the comptroller and myself were in New York, 10
and the former was negotiating loan (which failed) to pay the January, 1875, interest on State debt; then it was I first met Governor Morgan and was in banking house of Drexel, Morgan & Co., but certainly no such statements were made by me to Mr. Terry or to anyone else as he imputes to me in his deposition; I might have been in New York in 1873, but my acquaintance with the banking firm of E. D. Morgan & Co. and Drexel, Morgan & Co. does not antedate November or December, 1874. 11

2 Q. Please state the reputation and character of Robert J. McKinney, Archibald Wright, and Francis B. Fogg, the commissioners appointed by the Legislature of Tennessee to conduct the proceedings on behalf of the State against delinquent and insolvent railroad companies, if you are acquainted with their characters for integrity and intelligence. State also their ages, circumstances, and independency of and want of connection with railroads.

A. I have known personally the three gentlemen 12
named in above interrogatory for years, and I am at a loss for words to express the high esteem in which they have been for years and still are deservedly held by the entire people of Tennessee, and of their entire fitness to conduct properly the work assigned them of protecting and disposing of the State's interest in railroads; they are or were all

beyond the age of sixty-five; ages not exactly known to me; of the highest integrity and intelligence; two had prior to the war occupied places on the Supreme Bench with distinguished credit, and the other for years the leading lawyer of Middle Tennessee; all in independent circumstances financially, and regarded this important trust committed to them as perhaps the closing public service of their lives; it was in my opinion discharged with singular fidelity and wisdom; and further saith not.

WILLIAM MORROW.

Subscribed and sworn to before me, March 11, 1880.

L. W. HUMES,
Special Examiner.

East Tennessee and Virginia Railroad Receipts to the State of Tennessee for Bonds.

UNITED STATES CIRCUIT COURT,

SIXTH JUDICIAL CIRCUIT,

Eastern District of Tennessee.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement Bonds of Tennessee issued to the EAST TENNESSEE AND VIRGINIA RAILROAD COMPANY,

versus

The EAST TENNESSEE, VIRGINIA AND GEORGIA RAILROAD COMPANY *et al.*

It is hereby stipulated and agreed between the parties to the above-entitled suit, that the certified copies of the receipts given by the railroads of Tennessee to the State for bonds issued to them respectively, and which have been produced by the complainants herein, shall be marked by the Special Examiner as Complainants' Exhibits, and filed by him separately, and that the same may be read in evidence by the complainants, subject to all legal objection, without attaching the same to the deposition of any one witness.

NEW YORK, November 12, 1879.

E. L. ANDREWS,
Solr. and of Counsel for Complainants,
W. Y. C. HUMES,
Solr. and of Counsel for Respondents.

Complainant's Exhibit A.

W. H. D. L., Spl. Exr.

$10,000.

EAST TENNESSEE & VIRGINIA RAILROAD CO.

NASHVILLE, July 27th, 1852.

Received of William B. Campbell, Governor of the State of Tennessee, ten coupon bonds of said State for one thousand dollars each, from No. 1 to No. 10, inclusive, Letter B, dated July 1st, 1852, and falling due on the 1st January, 1892, issued to the East Tennessee & Virginia Railroad Co., under the Act of the General Assembly of said State passed Jany. 15th, 1852, called the Bridge Bill.

$290,000. NASHVILLE, August 9, 1852.

Received of W. B. Campbell, Governor of the State of Tennessee, two hundred and ninety coupon bonds of said State, for one thousand dollars each, from No. 11 to No. 300, inclusive, Letter B, dated July 1st, 1852, issued to the East Tennessee & Virginia Railroad Co. under the Act of the General Assembly of said State passed Jany. 15th, 1852, called the Bridge Bill.

S. D. MITCHELL,
Agent E. Tenn. & Va. R. R. Co.

I, C. N. GIBBS, Secretary of State of the State of Tennessee, do certify that the foregoing is a copy of two receipts of S D. Mitchell, agent E. Tenn. & Va. R. R. Co., for three hundred bonds of the State of Tennessee, Letter B, numbered from No. 1 to 10, inclusive, and from No. 11 to 300, inclusive, respectively, the original of which is now of record in my office.

In testimony whereof, I have hereunto subscribed my official signature;

and, by order of the Governor, affixed the Great Seal of the State of Tennessee, at the Department, in the City of Nashville, this 18th day of August, A. D. 1879.

[SEAL.]

CHAS. N. GIBBS.
Secretary of State.

STATE OF TENNESSEE, }
Davidson County, }

I, JOHN C. FERRISS, sole presiding Judge of the County Court of said County, do hereby certify, that Chas. N. Gibbs, whose genuine signature appears to the foregoing certificate, is now, and was at the time of signing the same, Secretary of State for the State of Tennessee, duly elected and qualified as such; and that said attestation is in due form of law and by the proper officer.

Given under my hand, at office, in Nashville, on this 18th day of August 1879.

JOHN C. FERRISS,
County Judge.

STATE OF TENNESSEE, }
Davidson County }

I, J. R. MCCANN, Clerk of the County Court of said County, do hereby certify, that John C. Ferriss, Esq., whose genuine signature appears to the foregoing certificate, is now, and was at the time of signing the same, sole Presiding Judge of the County Court in and for said County, duly elected and commissioned and qualified as such; and that said attestation is in due form of law.

Witness my hand and seal of said Court, at office, this 18th day of August, 1879.

[SEAL.]

J. R. MCCANN,
Clerk.

13 **Complainant's Exhibit B.**

W. H. D. L., Spl. Exr.

$269,000.

NASHVILLE, January 29th, 1855.

Received of Andrew Johnson, Governor of the State of Tennessee, 269 coupon bonds of said State, for one thousand dollars each, numbered from No. 1,706 to No. 1,974, including both of these numbers, falling due 1st January, 1892, and bearing date 1st
14 of January, 1855, first coupon falling due 1st July, 1855, which bonds are issued to the East Tennessee and Virginia R. R. Co., for the section of said road embracing the two termini of said road, making together 26 and $\frac{9}{10}$ miles under the provisions of the Act of 11th February, 1852, and the 1st and 9th Sections of the Act amendatory thereof passed 8th February, 1854.

SAMUEL B. CUNNINGHAM,
15 *President and Agent of E. T. & Va. R. R. Co.*

SAMUEL RHEA,
Agent of E. T. & Va. R. R. Co.

50 cents per bond for engraving.

I, C. N. GIBBS, Secretary of State of the State of Tennessee, do certify that the forgoing is a copy of a receipt of Samuel B. Cunningham, President and Agent of E. T. & Va. R. R. Co. and Samuel Rhea,
16 Agent of the E. T. & Va. R. R. Co., for 269 bonds of the State of Tennessee, from No. 1,706 to 1,974 inclusive, the original of which is now of record in my office.

In testimony whereof, I have hereunto subscribed my official signature; and, by order of the Governor,

affixed the Great Seal of the State of Tennessee, at the Department, in the City of Nashville, this 18th day of August, A. D. 1879.

[SEAL.]

CHAS. N. GIBBS.
Secretary of State.

STATE OF TENNESSEE,
Davidson County,

I, JOHN C. FERRISS, sole presiding Judge of the County Court of said County, do hereby certify, that Chas. N. Gibbs, whose genuine signature appears to the foregoing certificate, is now, and was at the time of signing the same, Secretary of State for the State of Tennessee, duly elected and qualified as such; and that said attestation is in due form of law and by the proper officer.

Given under my hand, at office, in Nashville, on this 18th day of August, 1879.

JOHN C. FERRISS,
County Judge.

STATE OF TENNESSEE,
Davidson County

I, J. R. MCCANN, Clerk of the County Court of said County, do hereby certify, that John C. Ferriss, Esq., whose genuine signature appears to the foregoing certificate, is now, and was at the time of signing the same, sole Presiding Judge of the County Court in and for said County, duly elected and commissioned and qualified as such; and that said attestation is in due form of law.

Witness my hand and seal of said Court, at office, this 18th day of August, 1879.

[SEAL.]

J. R. MCCANN,
Clerk.

21 **Complainant's Exhibit C.**

W. H. D. L., Spl. Exr.

$100,000.

Received of ANDREW JOHNSON, Governor of the State of Tennessee, one hundred coupon bonds of said State for $1,000, from number 2,993 to No. 3,092, including both of these numbers, all dated the 1st January, 1855, and falling due 1st January, 1892, which bonds are issued for the second section,
22 being ten miles, commencing at the bridge at McBee's Ferry and extending eastwardly on the East Tennessee and Virginia Railroad.

November 7th, 1855.

SAM'L B. CUNNINGHAM,
President E. T. and Va. R. R. Co.

25 cents per bond for engraving.

I, C. N. GIBBS, Secretary of State of the State of Tennessee, do certify that the foregoing is a copy
23 of a receipt of Sam'l B. Cunningham, President E. T. and Va. R. R. Co., for 100 bonds of the State of Tennessee, from No. 2,993 to 3,092, inclusive, the original of which is now of record in my office.

In testimony whereof, I have hereunto subscribed my official signature; and, by order of the Governor, affixed the Great Seal of the State of Tennessee, at the Department, in
24 [SEAL.] the City of Nashville, this 18th day of August, A. D. 1879.

CHAS. N. GIBBS.
Secretary of State.

STATE OF TENNESSEE, }
Davidson County, } 25

I, JOHN C. FERRISS, sole presiding Judge of the County [Court of said County, do hereby certify, that Chas. N. Gibbs, whose genuine signature appears to the foregoing certificate, is now, and was at the time of signing the same, Secretary of State for the State of Tennessee, duly elected and qualified as such; and that said attestation is in due form of law and by the proper officer.

Given under my hand. at office, in Nash- 26
ville, on this 18th day of August, 1879.

JOHN C. FERRISS,
County Judge.

STATE OF TENNESSEE, }
Davidson County }

I, J. R. MCCANN, Clerk of the County Court of said County, do hereby certify, that John C. Ferriss, Esq., whose genuine signature appears to the fore- 27
going certificate, is now, and was at the time of signing the same, sole Presiding Judge of the County Court in and for said County, duly elected and commissioned and qualified as such; and that said attestation is in due form of law.

Witness my hand and seal of said Court,
[SEAL.] at office, this 18th day of August, 1879.

J. R. MCCANN, 28
Clerk.

29 **Complainant's Exhibit D.**

W. H. D. L., Spl. Exr.

$100,000.

Received of ANDREW JOHNSON, Governor of the State of Tennessee, one hundred coupon bonds of the State, for one thousand dollars each, from No. 3,133 to number 3,232, including both these numbers, letter B, bearing date 1st day of Jan., 1856, falling due first day of Jan., 1892; first coupon falling due first day of July, 1856; issued to the East
30 Tenn. and Virginia Railroad Company under the Act of the General Assembly passed Jan. 15th, 1852, and the amended Act of 1854; being for the section of said road commencing at or near New Market, extending east ten miles, being the third section of said road.

Jan. 17th, 1856.

EAST TENNESSEE & VA. R. R. CO.,

By their President and Agent,

31 SAM'L B. CUNNINGHAM.

No tax upon these bonds for engraving.

I, C. N. GIBBS, Secretary of State of the State of Tennessee, do certify that the foregoing is a copy of a receipt of Sam'l B. Cunnignham, President and Agent East Tenn. and Va. R. R. Co., for 100 bonds of the State of Tennessee, letter B, from No. 3,133 to 3,232, inclusive, the original of which is now of record in my office.

32 In testimony whereof, I have hereunto subscribed my official signature; and, by order of the Governor, affixed the Great Seal of the State of Tennessee, at the Department, in the City of Nashville, this 18th day of August, A. D. 1879.

[SEAL.]

CHAS. N. GIBBS,

Secretary of State.

STATE OF TENNESSEE, }
Davidson County, } 33

I, JOHN C. FERRISS, sole presiding Judge of the County Court of said County, do hereby certify, that Chas. N. Gibbs, whose genuine signature appears to the foregoing certificate, is now, and was at the time of signing the same, Secretary of State for the State of Tennessee, duly elected and qualified as such; and that said attestation is in due form of law and by the proper officer.

Given under my hand. at office, in Nash- 34
ville, on this 18th day of August, 1879.

JOHN C. FERRISS,
County Judge.

STATE OF TENNESSEE, }
Davidson County }

I, J. R. MCCANN, Clerk of the County Court of said County, do hereby certify, that John C. Ferriss, 35
Esq., whose genuine signature appears to the foregoing certificate, is now, and was at the time of signing the same, sole Presiding Judge of the County Court in and for said County, duly elected and commissioned and qualified as such; and that said attestation is in due form of law.

Witness my hand and seal of said Court,
[SEAL.] at office, this 18th day of August, 1879.

J. R. MCCANN, 36
Clerk.

37 **Complainant's Exhibit E.**

W. H. D. L., Spl. Exr.

Received of ANDREW JOHNSON, Governor of the State of Tennessee, one hundred and twenty coupon bonds of said State, for one thousand dollars each, running from number 4272 to number 4391, both of these numbers included, the first coupon on the same falling due first January, 1857; bond falling due first January, 1892; principal and interest payable in New York. Said bonds are issued to the East Tennessee and Virginia Railroad, in pursuance of the General Internal Improvement Acts of 1851-2 and 1853-4 for that section of said road extending from the $36\frac{2}{10}$ to the $48\frac{2}{10}$ mile of said road.

38

July 15th, 1856.

SAML. B. CUNNINGHAM,
Pres. & Agent E. T. & Va. R. R. Co.

39 I, C. N. GIBBS, Secretary of the State of Tennessee, do certify that the foregoing is a copy of the receipt of Samuel B. Cunningham, Pres. and Agent East Tennessee Railroad Company, for 120 Tennessee State bonds, from No. 4,272 to 4391, the original of which is now of record in my office.

In testimony whereof, I have hereunto subscribed my official signature; and, by order of the Governor,
40 affixed the Great Seal of the State of Tennessee, at the Department, in
[SEAL.] the City of Nashville, this 18th day of August, A. D. 1879.

CHAS. N. GIBBS.
Secretary of State.

STATE OF TENNESSEE, }
Davidson County, } 41

I, JOHN C. FERRISS, sole presiding Judge of the County Court of said County, do hereby certify, that Chas. N. Gibbs, whose genuine signature appears to the foregoing certificate, is now, and was at the time of signing the same, Secretary of State for the State of Tennessee, duly elected and qualified as such; and that said attestation is in due form of law and by the proper officer.

Given under my hand. at office, in Nash- 42
ville, on this 18th day of August, 1879.

JOHN C. FERRISS,
County Judge.

STATE OF TENNESSEE, }
Davidson County }

I, J. R. MCCANN, Clerk of the County Court of said County, do hereby certify, that John C. Ferriss, 43
Esq., whose genuine signature appears to the foregoing certificate, is now, and was at the time of signing the same, sole Presiding Judge of the County Court in and for said County, duly elected and commissioned and qualified as such; and that said attestation is in due form of law.

Witness my hand and seal of said Court,
[SEAL.] at office, this 18th day of August, 1879.

J. R. MCCANN, 44
Clerk.

45 **Complainant's Exhibit F.**

W. H. D. L., Spl. Exr.

$55,000.

Received of Andrew Johnson, Governor of the State of Tennessee, fifty-five bonds of the State of Tennessee, commencing at No. 4,841 and running to No. 4,895, both of these numbers included, principal and interest payable in New York, bonds falling due 1st January, 1892, first coupon falling due
46 1st January, 1892. These fifty-five bonds were issued upon the third application of the East Tennessee and Virginia Railroad Company, made June 19th, 1856, and under the Act passed on the 11th of February, 1852, entitled an Act to establish a system of Internal Improvements, and also an Act passed 8th Febrnary, 1854, amendatory thereto, passed 1853–'4.

NASHVILLE, November 18, 1856.

SAMUEL B. CUNNINGHAM,
47 *President E. T. & Va. R. R. Co.*

I, C. N. GIBBS, Secretary of State of the State of Tennessee, do certify that the foregoing is a copy of the receipt of Saml. B. Cunningham, President East Tennessee and Virginia Railroad Company for fifty-five Tennessee State bonds, from 4,841 to 4,895, the original of which is now of record in my office.

In testimony whereof, I have hereunto
48 subscribed my official signature; and, by order of the Governor, affixed the Great Seal of the State of Tennessee, at the Department, in
[SEAL.] the City of Nashville, this 18th day of August, A. D. 1879.

CHAS. N. GIBBS.
Secretary of State.

STATE OF TENNESSEE, }
Davidson County, } 49

I, JOHN C. FERRISS, sole presiding Judge of the County Court of said County, do hereby certify, that Chas. N. Gibbs, whose genuine signature appears to the foregoing certificate, is now, and was at the time of signing the same, Secretary of State for the State of Tennessee, duly elected and qualified as such; and that said attestation is in due form of law and by the proper officer.

Given under my hand. at office, in Nash- 50
ville, on this 18th day of August, 1879.

JOHN C. FERRISS,
County Judge.

STATE OF TENNESSEE, }
Davidson County }

I, J. R. MCCANN, Clerk of the County Court of said County, do hereby certify, that John C. Ferriss, 51
Esq., whose genuine signature appears to the foregoing certificate, is now, and was at the time of signing the same, sole Presiding Judge of the County Court in and for said County, duly elected and commissioned and qualified as such; and that said attestation is in due form of law.

Witness my hand and seal of said Court,
[SEAL.] at office, this 18th day of August, 1879.

J. R. MCCANN, 52
Clerk.

1,112.

53 **Complainant's Exhibit G.**

W. H. D. L., Spl. Exr.

$195,000.

EAST TENN. & VA. RAILROAD.

Received from Andrew Johnson, Governor of Tennessee, one hundred and ninety-five coupon bonds of the State of Tennessee, each for one thousand dollars, principal and interest payable in New York, bonds falling due on 1st January, 1892, first
54 coupon falling due on the 1st July, 1857, numbers of said bonds from No. 5,048 to No. 5,242, both these numbers included. Said bonds are issued to the East Tenn. and Va. Railroad Company under the Internal Improvement Act of said State, passed the 11th February, 1852, entitled "An Act to establish a system of Internal Improvements," and also an Act passed 8th February, 1854, amendatory thereto, passed 1853-'4.

These bonds are issued for that portion of road
55 extending from the north bank of the Holsten, at a place called Union, to a distance of nineteen and a half miles westward.

NASHVILLE, March 3d, 1857.

SAML. B. CUNNINGHAM,
Prest. and Agt. E. T. & Va. R. R. Co.

I, C. N. GIBBS, Secretary of State of the State of Tennessee, do certify that the foregoing is a copy of the receipt of Saml. B. Cunningham, President and
56 Agent East Tennessee and Virginia Railroad Company for one hundred and ninety-five Tennessee State bonds, from No. 5,048 to 5,242, the original of which is now of record in my office.

In testimony whereof, I have hereunto subscribed my official signature; and, by order of the Governor, affixed the Great Seal of the State

of Tennessee, at the Department, in 57
[SEAL.] the City of Nashville, this 18th day of August, A. D. 1879.

CHAS. N. GIBBS.
Secretary of State.

STATE OF TENNESSEE,
Davidson County,

I, JOHN C. FERRISS, sole presiding Judge of the County Court of said County, do hereby certify, that Chas. N. Gibbs, whose genuine signature ap- 58
pears to the foregoing certificate, is now, and was at the time of signing the same, Secretary of State for the State of Tennessee, duly elected and qualified as such; and that said attestation is in due form of law and by the proper officer.

Given under my hand, at office, in Nashville, on this 18th day of August, 1879.

JOHN C. FERRISS,
County Judge. 59

STATE OF TENNESSEE,
Davidson County

I, J. R. MCCANN, Clerk of the County Court of said County, do hereby certify, that John C. Ferriss, Esq., whose genuine signature appears to the foregoing certificate, is now, and was at the time of signing the same, sole Presiding Judge of the County Court in and for said County, duly elected and commissioned and qualified as such; and that 60
said attestation is in due form of law.

Witness my hand and seal of said Court,
[SEAL.] at office, this 18th day of August, 1879.

J. R. MCCANN,
Clerk.

1,114.

61 **Complainant's Exhibit H.**

W. H. D. L., Spl. Exr.

$150,000.

EAST TENN. & VA. R. RD.

Received from Andrew Johnson, Governor of the State of Tenn., one hundred and fifty coupon bonds of the State of Tennessee, each for one thousand dollars, principal and interest payable in New York Bonds falling due on the 1st January, 1892;
62 first coupons falling due on the 1st July, 1857.

Numbers of said bonds from No. 5,303 to 5,452 inclusive.

Said bonds are issued to the East Tennessee & Va. Railroad Company under the Internal Improvement Act of said State, passed the 11th February, 1852, entitled "An Act to establish a system of Internal Improvements," and also an act passed 8th February, 1854, amendatory thereto, passed 1853-4. These bonds are issued for that portion of
63 road extending from the east end of Sec. 86 to the crossing of Big Limestone Creek, or a distance of fifteen miles.

Nashville, June 8, 1857.

SAML. B. CUNNINGHAM,
Prest. E. T. & Va. R. R. Co.

I, C. N. GIBBS, Secretary of State of the State of Tennessee, do certify that the foregoing is a copy of the receipt of Saml. B. Cunningham, Prest. East
64 Tennessee & Virginia Railroad Company, for 150 Tennessee State bonds from No. 5,303 to 5,452, the original of which is now of record in my office.

In testimony whereof, I have hereunto subscribed my official signature; and, by order of the Governor, affixed the Great Seal of the State

of Tennessee, at the Department, in 65
[SEAL.] the City of Nashville, this 18th day of August, A. D. 1879.

CHAS. N. GIBBS.
Secretary of State.

STATE OF TENNESSEE, }
Davidson County, }

I, JOHN C. FERRISS, sole presiding Judge of the County Court of said County, do hereby certify, that Chas. N. Gibbs, whose genuine signature ap- 66
pears to the foregoing certificate, is now, and was at the time of signing the same, Secretary of State for the State of Tennessee, duly elected and qualified as such; and that said attestation is in due form of law and by the proper officer.

Given under my hand, at office, in Nashville, on this 18th day of August, 1879.

JOHN C. FERRISS,
County Judge. 67

STATE OF TENNESSEE, }
Davidson County }

I, J. R. MCCANN, Clerk of the County Court of said County, do hereby certify, that John C. Ferriss, Esq., whose genuine signature appears to the foregoing certificate, is now, and was at the time of signing the same, sole Presiding Judge of the County Court in and for said County, duly elected and commissioned and qualified as such; and that 68
said attestation is in due form of law.

Witness my hand and seal of said Court,
[SEAL.] at office, this 18th day of August, 1879.

J. R. MCCANN,
Clerk.

69 **Complainant's Exhibit I.**

W. H. D. L., Spl. Exr.

70.000. EAST TENNESSEE & VIRGINIA RAILROAD.

Received from Andrew Johnson, Governor of the State of Tennessee, seventy coupon bonds, of said State, each for one thousand dollars, principal and interest payable in New York; bonds falling due on the 1st January, 1892, first coupon falling due on the 1st of January, 1858. Numbers of said bonds,
70 running from No. 5,793 to No. 5,862 inclusive. Said bonds are issued to the East Tennessee and Virginia Railroad Co. under the Internal Improvement Act of said State, passed the 11th of February, 1852, entitled an Act to establish a system of Internal Improvements, and also an Act passed 8th of February, 1854, amendatory thereto.

These bonds are issued on the application made June 8th, 1857, in which a bridge on Big Limestone Creek was included, but not then finished, and a
71 balance of seven miles of road not then included, in other words, for 22 miles of road and the completion of bridge over Big Limestone Creek.

Nashville, Oct. 12, 1857.

SAMUEL B. CUNNINGHAM,
President and Agent E. T. & Va. R. R. Co.

I, C. N. Gibbs, Secretary of State of the State of Tennessee, do certify that the foregoing is a copy of the receipt of Samuel B. Cunningham, President and
72 Agent East Tenn. & Va. Railroad Co., for 70 Tennessee State bonds, from No. 5,793 to 5,862, the original of which is now of record in my office.

In testimony whereof, I have hereunto subscribed my official signature; and, by order of the Governor, affixed the Great Seal of the State

of Tennessee, at the Department, in 73
[SEAL.] the City of Nashville, this 18th day of August, A. D. 1879.

CHAS. N. GIBBS.
Secretary of State.

STATE OF TENNESSEE, }
Davidson County, }

I, JOHN C. FERRISS, sole presiding Judge of the County Court of said County, do hereby certify, that Chas. N. Gibbs, whose genuine signature ap- 74
pears to the foregoing certificate, is now, and was at the time of signing the same, Secretary of State for the State of Tennessee, duly elected and qualified as such; and that said attestation is in due form of law and by the proper officer.

Given under my hand. at office, in Nashville, on this 18th day of August, 1879.

JOHN C. FERRISS,
County Judge. 75

STATE OF TENNESSEE, }
Davidson County }

I, J. R. MCCANN, Clerk of the County Court of said County, do hereby certify, that John C. Ferriss, Esq., whose genuine signature appears to the foregoing certificate, is now, and was at the time of signing the same, sole Presiding Judge of the County Court in and for said County, duly elected and commissioned and qualified as such; and that 76
said attestation is in due form of law.

Witness my hand and seal of said Court,
[SEAL.] at office, this 18th day of August, 1879.

J. R. MCCANN,
Clerk.

1,118.

77 **Complainant's Exhibit J.**

W. H. D. L., Spl. Exr.

EAST TENNESSEE & VIRGINIA R. R. Co.

Received, Nashville, June 10th, 1858, from Isham G. Harris, Governor of the State of Tennessee, forty-three coupon bonds of said State, issued upon their last application, it being the last installment due them—it is iron and equipment aid—each for one thousand dollars, principal and interest pay-
78 able in the city of New York, said bonds falling due the first day of January, 1892, first coupon falling due the first day of July, 1858, Nos. of said bonds from 7,088 to 7,130, both numbers inclusive.

SAML. B. CUNNINGHAM,
President and Agent E. T. & Va. R. R. Co.

I, C. N. GIBBS, Secretary of State of the State of Tennessee, do certify that the foregoing is a copy of a receipt of Saml B. Cunningham, president and
79 agent E. Tenn. & Virginia Railroad Co., for 43 bonds of Tennessee, numbered from 7,088 to 7,130, the original of which is now of record in my office.

In testimony whereof, I have hereunto subscribed my official signature; and, by order of the Governor, affixed the Great Seal of the State of Tennessee, at the Department, in
[SEAL.] the City of Nashville, this 18th day
80 of August, A. D. 1879.

CHAS. N. GIBBS,
Secretary of State.

STATE OF TENNESSEE, }
Davidson County, } 81

I, JOHN C. FERRISS, sole presiding Judge of the County Court of said County, do hereby certify, that Chas. N. Gibbs, whose genuine signature appears to the foregoing certificate, is now, and was at the time of signing the same, Secretary of State for the State of Tennessee, duly elected and qualified as such; and that said attestation is in due form of law and by the proper officer.

Given under my hand. at office, in Nashville, on this 18th day of August, 1879. 82

JOHN C. FERRISS,
County Judge.

STATE OF TENNESSEE, }
Davidson County }

I, J. R. MCCANN, Clerk of the County Court of said County, do hereby certify, that John C. Ferriss, Esq., whose genuine signature appears to the foregoing certificate, is now, and was at the time of signing the same, sole Presiding Judge of the County Court in and for said County, duly elected and commissioned and qualified as such; and that said attestation is in due form of law. 83

Witness my hand and seal of said Court,
[SEAL.] at office, this 18th day of August, 1879.

J. R. MCCANN, 84
Clerk.

85 **Complainant's Exhibit K.**

W. H. D. L., Spl. Exr.

EAST TENNESSEE AND VIRGINIA RAIL ROAD CO.

$300,000.

No. 1396 to 1695.

Received, Nashville, Tenn., April 26, 1866, of W. G. Brownlow, Governor of the State of Tennessee, three hundred of the six per cent. coupon
86 bonds of the said State, for one thousand dollars each, principal and interest payable in New York. The bonds fall due 1st January, 1892. First coupons fall due July 1, 1866. Said bonds are dated 1st January, 1866, and are of the green issue of 1866, not lettered, but numbered from 1,396 to 1,695, inclusive.

Said bonds are issued under the Act of January 18, 1866, in full payment of an appropriation of three hundred thousand dollars, State aid to the
87 East Tennessee and Virginia Rail Road Company, to be used in rebuilding the bridges, repairing said road, and putting the same in running order.

JNO. R. BRANNER,
President E. Tenn. & Va. R. R. Co.

I, C. N. GIBBS, Secretary of State of the State of Tennessee, do certify that the foregoing is a copy of a receipt of Jno. R. Branner, President East Tenn. & Va. Rail Road Co., for 300 Tennessee State
88 bonds, from No. 1,396 to 1,995, inclusive, the original of which is now of record in my office.

In testimony whereof I have hereunto subscribed my official signature, and, by order of the Governor, affixed the Great Seal of the State of Tennessee, at the Department,

[L.S.]

in the city of Nashville, this 18th day of September, A. D. 1879.

CHAS. N. GIBBS,
Secretary of State.

STATE OF TENNESSEE, }
Davidson County. }

I, JOHN C. FERRISS, sole Presiding Judge of the County Court of said county, do hereby certify that Chas. N. Gibbs, whose genuine signature appears to the foregoing certificate, is now, and was at the time of signing the same, Secretary of State for the State of Tennessee, duly elected and qualified as such, and that said attestation is in due form of law and by the proper officer.

Given under my hand, at office, in Nashville, on this 19th day of Sept., 1879.

JNO. C. FERRISS,
County Judge.

STATE OF TENNESSEE, }
Davidson County. }

I, J. R. MCCANN, Clerk of the County Court of said county, do hereby certify that John C. Ferriss, Esq., whose genuine signature appears to the foregoing certificate, is now, and was at the time of signing the same, sole Presiding Judge of the County Court in and for said county, duly elected and commissioned and qualified as such, and that said attestation is in due form of law.

Witness my hand and seal of said Court,
[L.S.] at office, this 19th day of Sept., 1879.

J. R. MCCANN,
Clerk.

1,122.

93 **Complainant's Exhibit L.**

W. H. D. L., Spl. Exr.

EAST TENNESSEE & VA. RAILROAD CO.

$300,000.

No. 6033 to 6332.

Received Nashville, February 14th, 1867, of W. G. Brownlow, Governor of the State of Tennessee, three hundred coupon Bonds of said State for one thousand dollars each. Principal and interest pay-
94 able in New York. Said bonds falling due January 1st, 1892. First coupons falling due July 1st, 1867. Said bonds are numbered from 6,033 to 6,332, both number inclusive. Said bonds are issued under the act December 10th, 1866, to the East Tennessee & Va. Railroad Company, and are received in full satisfaction of the appropriation to said Railroad Company, made by said act,

JOHN R. BRANNER,

95 *Prest. East Tenn. & Va. Railroad Co.*

I, C. N. GIBBS, Secretary of State of the State of Tennessee, do certify that the foregoing is a copy of a receipt of Jno R. Branner, President East Tennessee & Virginia Railroad Company, for 300 Tennessee State Bonds, from No. 6,033 to 6,332, inclusive. the original of which is now of record in my office.

In testimony whereof I have hereunto
96 subscribed my official signature, and, by order of the Governor, af-
[L.S.] fixed the Great Seal of the State of Tennessee, at the Department, in the city of Nashville, this 18th day of September, A. D. 1879.

CHAS. N. GIBBS,
Secretary of State.

STATE OF TENNESSEE, } 97
Davidson County. }

I, JOHN C. FERRISS, sole Presiding Judge of the County Court of said county, do hereby certify that Chas. N. Gibbs, whose genuine signature appears to the foregoing certificate, is now, and was at the time of signing the same, Secretary of State for the State of Tennessee, duly elected and qualified as such, and that said attestation is in due form of law and by the proper officer.

98

Given under my hand, at office, in Nashville, on this 19th day of Sept., 1879.

JNO. C. FERRISS,
County Judge.

STATE OF TENNESSEE, }
Davidson County. }

I, J. R. MCCANN, Clerk of the County Court of said county, do hereby certify that John C. Ferriss, 99
Esq., whose genuine signature appears to the foregoing certificate, is now, and was at the time of signing the same, sole Presiding Judge of the County Court in and for said county, duly elected and commissioned and qualified as such, and that said attestation is in due form of law.

Witness my hand and seal of said Court,
[L.S.] at office, this 19th day of Sept., 1879.

J. R. MCCANN, 100
Clerk.

1,124.

1

Stipulation.

UNITED STATES CIRCUIT COURT,

EASTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement Bonds of Tennessee, issued to the East Tennessee and Virginia Railroad Company, 2

vs.

THE EAST TENNESSEE, VIRGINIA AND GEORGIA RAILROAD COMPANY.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement Bonds of Tennessee, issued to the East Tennessee and Georgia Railroad Company, 3

vs.

THE EAST TENNESSEE, VIRGINIA AND GEORGIA RAILROAD COMPANY. 4

5 CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement Bonds of Tennessee, issued to the Cincinnati and Cumberland Gap and Charleston Railroad Company,

vs.

6 THE CINCINNATI, CUMBERLAND GAP AND CHARLESTON RAILROAD COMPANY *et al.*

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement Bonds of Tennessee,
7 issued to the Knoxville and Railroad Company.

vs.

THE KNOXVILLE AND RAILROAD COMPANY *et al.*

8

WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement Bonds of Tennessee, issued to the Memphis and Charleston Railroad Company

vs.

THE MEMPHIS & CHARLESTON RAILROAD COMPANY *et al.*

It is hereby stipulated by and between the parties to the above-entitled suits, in order to avoid the trouble, expense and delay of formal proofs, that the following facts are to be taken as proven in these causes:

First.—That up to the passage of the Internal Improvement law, February 11, 1852, the State of Tennessee had never defaulted upon the interest of her public debt, and the straight bonds of the State were, before such date, and thereafter, quoted on New York stock exchange as follows:

13 Quotations of sales of Tennessee State bonds taken from the official reports of the New York Stock Exchange—

DATE OF SALE.			AMOUNT OF SALE.	PRICE.
1850	April	23	1,000 6s	105
"	May.....	29	1,000 6s	104
"	July	15	1,000 6s	104
14 "	Nov.	4	2,000 6s	101¼
1851	March.....	27	5,000 6s	100⅓
"	April.....	3	10,000 6s	100½
"	May	17	2,000 6s	100½
1852	Feb'y	24	1,000 6s	102
"	April	9	7,000 6s,'90	105
"	May	31	2,000 5s	92
"	June	17	2,000 6s	110
"	July.....	19	2,000 5s	92
"	Dec.....	9	5,000 6s,'68	106
1853	June		3,000 6s,'90	108
"	July		7,000 6s	105⅝
15				

Second.—That with the exception of some interest paid in 1867 and 1868, and some paid in 1874 and 1875, the State of Tennessee has paid no interest upon any of its obligations since the commencement of the late war; and the coupons of the bonds of these complainants, up to the first day of January, 1876, and since the beginning of the war, except that paid by the State in 1867–8, and in 1874–5,
16 as previously stated, has nearly all been funded into new bonds of the State of Tennessee under the various funding Acts of said State.

Third.—That the prices of Tennessee State bonds at the New York Stock Exchange in each month from April, 1870, to December, 1875, and during the first six months of 1879, were as follows:

1870.

	New.	Ex. coup.	Old.	Highest price	Lowest price	Average price
April	2193			57⅛	51	542.68673
		299		61	58	579.47909
May	2415			57¼	54¼	562.28571
		260		70	59¾	614.53365
June	5865			65¾	57¼	612.13162
		783		67⅜	61¾	630.47254
July	3621			68¼	58⅜	634.76311
		643		70	61	628.29121
August	860			62⅜	59¾	567.43023
		312		64	60	618.42147
September		196		62¾	61¾	622.21938
	633			61	60	605.21936
October	331			61	60	604.68277
			1	62¼	62⅛	622.50
		142		62⅞	62¼	626.70774
November	529			60¼	55¼	580.82884
			150	62	57	604.25
December	1370			64¾	57¼	614.08941
			328	65	69	622.51143

17

18

1871.

	New.	Old.	Highest price.	Lowest price.	Average price.
January	1039		64¾	61	634.45741
		542	64⅝	62¾	638.75922
February	360		64¾	62¾	639.57500
		305	64⅞	64	643.40983
March	555		65⅝	63⅝	642.78378
		323	65⅝	63⅝	642.98761
April	582		67⅞	65½	664.06357
		438	67⅜	65⅝	662.82534
May	1385		72⅝	67⅛	703.12454
		761	72⅜	67¼	713.71287
June	972		73	70⅛	715.75874
		344	73⅛	71	718.16133
July	158		72⅜	71½	718.81329
		179	72¾	71½	719.81843
August	371		76⅝	73	750.55256
		234	76	73	748.63782
September	232		75	71⅛	723.58297
		241	74⅞	71	729.83402
October		357	72	64¼	660.65826
	799		71¾	63½	671.89299
November		272	68	64	659.97702
	467		68½	64	654.30942
December		330	67¼	61	638.54924
	519		67	61¼	639.28709

19

20

1872.

	Old.	New.	Highest price.	Lowest price.	Average price.
January	212		68	63½	652.77123
		373	67¾	63½	653.67962
February	216		67¼	65½	668.28472
		607	67⅞	65½	652.54736
March	88		67	66	666.78840
		184	67⅛	66	667.88043
April	268		70½	66¾	677.66790
		104	70¼	66¾	687.07932
May	421		73½	68¼	718.23337
		460	73½	68¼	714.25
June	298		75	72	737.26929
		149	75	72	731.27576
July	176		75	72½	733.79261
		232	75⅛	72¾	723.16271
August	155		74½	73¼	737.91934
		320	75	73¼	737.77734
September	143		74	72	728.07692
		140	74⅛	71	728.08928
October	223		75⅛	72½	732.99887
		203	75½	72½	731.60714
November	226		76	73	739.05973
		132	76¼	73½	747.23484
December	233		82½	76	794.71861
		178	83	76	811.59410

1873.

	Old.	New.	Highest price.	Lowest price.	Average price.
January	226		82¼	79¼	806.58834
		244	82½	79¾	807.80737
February	717		83½	79	805.36784
		735	83½	78½	798.79591
March	768		86	80	820.55826
		1066	87	79½	819.00680
April	204		80¾	77½	797.67769
		145	80¼	78½	792.84482
May	145		82	79	812 09482
		240	82	78½	810.03645
June	51		81	79	797.30392
		187	80½	78½	792.26604
July	74		81¾	80¼	809.40878
		174	81½	79¾	810.
August		101	82¼	81⅜	820.27227
	30		82½	81¾	822.
September	23		82⅜	72	798.48484
		100	82¼	72½	803.77500
October	194		75	68	707.20360
		128	74¾	69	716.72851
November	48		72¼	62	665.93750
		141	72½	62	698.74113
December	70		81¼	73	782.03571
		110	81	71¼	780.52272

1874.

	Old.	New Series.	Coupon.	Coupon Ex.	New Ex Coupon	New.	Highest price.	Lowest price.	Average price.	
January	227						81½	79	800.46211	25
		20					63¾	62	629.60	
			16				63½	63	633.12500	
					14		63	62½	630.71428	
						38	81	79½	803.98026	
February	147						91	81½	867.79061	
					18		70¾	66	680.62500	
						55	91	82¼	878.81818	
			57				71¼	63½	689.94736	
		35					71½	63½	684.57142	
March		106					71½	68½	700.45990	
	148						91¾	89	909.17229	26
					113		71¼	69½	706.89159	
						71	91½	88¼	899.29577	
			137				72	68⅜	702.68248	
April		118					68	64¼	668.58050	
						15	88	84	855.16666	
	25						88¾	84	868.10	
			56				68½	64	666.98660	
					52		67¾	64	644.47011	
May	66						85	82½	832.31060	
		64					65½	63	639.55007	
			136				65¼	63	641.11213	
					96		64¾	61	628.42447	
						83	84¼	82¼	833.88554	
June		126					63½	61	620.46626	
			83				63½	61	625.52710	27
						9	80	79½	795.55555	
	12						81	79	804.16666	
					49		64	61	617.04081	
July		62					59⅝	53	545.48387	
			75				60½	53½	570.85	
					21		60	54½	571.07142	
	4						70	79	790.	
						2	54	54	540.	
August						5	75½	75½	735.	
		57					58	56	573.66228	
					56		58	56	576.46875	
	23						78	77	777.82608	
			93				58	54½	572.21774	
September		43					57	49	545.	
					38		57¼	50	548.78289	
			31				57½	52	562.09667	28
	15						77	76	766.	
October	1						72	72	720.	
			48				55⅜	52	535.78125	
					52		56	51	547.88461	
		43					56	51	544.85465	
November			166				57⅞	55	574.05873	
	12						75⅜	74¼	748.125	
						1	57	55	559.77040	
		49					70	70	700.	
					111		57⅛	54⅞	558.88513	
December	134						60	57	583.56243	
					146		60	56½	582.85958	
			99				59	57	578.59090	

	Old.	New Series	Coupon Old Ex.	Coupon New Ex.	New.	Coup. Ex.	Highest price	Lowest price	Average price.
January.....		71					55¼	44	499.85915
			137				56⅛	43	513.43978
				193			56	47	521.26295
					2		78¾	78¾	787.50
February.....						15	55½	55½	555.
			60	34			49½	45	472.64705
		30					50	46	482.58333
30 March	1						48	45	456.70833
					1		67½	67½	675.
							65	65	650.
			86	54			48¼	47	477.17592
April		84					49	47¼	479.89825
					1		48	46	474.22619
				69			70	70	700.
			115				53⅞	49	529.74657
		46					55	49¾	537.16304
May.....							53½	50	517.77173
	68				34		71½	50	507.64705
				24			51¼	50⅛	509.06250
			44				51	49½	501.66666
		97					51¾	50	507.55681
June							51	49½	502.83814
	223				34		54⅞	45¼	513.12500
31							55	46	505.19618
July	190	94					54⅜	45	486.59574
		22					51¼	47½	500.34868
							50	47½	487.72727
August.....					85		50⅞	47½	494.41176
	113				72		53	49⅜	510.31250
		35					53½	50¼	518.86061
							52½	50	504.85714
September.....	12			11			51	50	505.11363
		18					52	51½	517.29166
October.....							51	50	508.05555
		47			49		50	46	470.25510
	107						47⅜	45½	463.24468
November		71					48½	52½	501.93925
	180						46¾	45	463.75
32 December.....	126				62		49	45	471.00694
							47	45	458.48790
					129		47	40¾	431.18055
		91					45	38¼	422.82945
							45	38¼	409.07967

1879. 33

	New.	Old.	New Series	Highest price.	Lowest price.	Average price.
January,	4			29¾	26	275.93750
		12		37	36	367.08333
			6	28	26	263.33333
February,		19		42	36½	394 21052
	20			28½	25	271.
			30	29	24¾	270.54833
March,		5		35⅛	35	350.25
			40	28¼	25	277.43750
	39			29½	24	259.26282
April,		21		39½	34	361,07142 34
	26			32	30	304.61538
			6	30¾	30	301.25
May,		68		35½	35	353.80514
	3			33	31¾	323.33333
			16	33	30½	320.93750
June,		8		35⅛	34	345.15625
	24			32¾	31	314.27083
			3	32	30½	314.16666
July,		34		35½	33½	344.00735
			2	32⅝	32½	325.62500
	27			34¼	31	318.14814

The foregoing stipulation is made subject to all 35
legal objections to the materiality and relevancy of
the matters therein stated.

EVARTS, SOUTHMAYD & CHOATE,
E. L. ANDREWS.

36

1,134.

STIPULATION AS TO MERCHANTS' BANK OF TENNESSEE.

United States Circuit Court,

Sixth Judicial Circuit, Eastern District of Tennessee.

IN EQUITY.

CALVIN A. STEVENS ET AL.

vs.

THE RAILROAD COMPANIES.

In the above entitled cause it is agreed and stipulated by complainants and defendants, by their respective solicitors, that the Merchants' Bank of New York was the correspondent in New York through whom the Bank of Tennessee paid the interest coupons payable in New York on all the bond of the State of Tennessee issued for all purposes, and that this agency continued from 1852 through the years 1853, 1854, 1855, 1856, 1857, 1858, 1859, 1860, to April 1861. The ledgers in the Merchants' Bank, and the book in which they took the receipts of coupon holders, and the detailed statements of paid coupons forwarded regularly every six months by the Merchants' Bank to the Bank of Tennessee, show that, as to all bonds issued under the act of 1851–'2, ch. 151, and amendments, the Merchants' Bank did not keep, nor attempt to keep, an account showing the railroad company to whom the bonds were issued, the coupons on which were paid; nor did they attempt to classify or identify the coupons when paid as being coupons from bonds issued to any particular railroad company, or for any particular

purpose. The only accounts shown on the books of the Merchants' Bank for said years with the Bank of Tennessee were two: first, the general reciprocal account, on one side of which appeared the gross sums of money to the credit of the Bank of Tennessee, and on the other, its checks and drafts; secondly, an interest or coupon account showing the amount of coupons paid, and this account was credited with, and balanced by, checks drawn by the Bank of Tennessee upon its regular account and balance in the Merchants' Bank at the time, without discrimination as to the coupons to which the payments were applied.

This admission is made alone to save the expense and trouble of making copies of the entries from said books of the Merchants' Bank, and states truly the facts as they actually appear on the books of said Merchants' Bank.

E. L. ANDREWS,
Solicitor for Complainants.

W. Y. C. HUMES,
Solicitor for Defendants.

FEBRUARY 14, 1880.

Deposition of S. R. Cruse.

1

UNITED STATES CIRCUIT COURT,

DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement Bonds of Tennessee issued to the
Railroad Company,

2

versus

THE
RAILROAD COMPANY *et al.*

Deposition of S. R. CRUSE, witness for defendants, taken in Memphis, Tennessee, March 20th, 1880, before L. W. HUMES, Special Examiner, duly appointed under an order of the United States Circuit Court, Western District of Tennessee, taken pursuant to agreement.

3

Present, W. Y. C. HUMES, for defendants.

S. R. CRUSE, being first duly sworn, deposed as follows:

4

My name is S. R. Cruse; age, years; I live in Memphis, Tennessee; I am Secretary and Treasurer of the Memphis & Charleston Railroad Company, and have been about years; I personally know that the Memphis & Charleston Railroad Company

has been in the exclusive and actual adverse possession of the entire track and road-bed of said railroad, from the City of Memphis to the western boundary of the State of Mississippi, and of the branch from Moscow to Somerville, and of the depots and depot grounds of said railroad in Tennessee, from Memphis to the Mississippi line, and of all the property of, belonging to and appurtenant to said railroad in the State of Tennessee, and has been holding the same and every part thereof adversely to any and all claims of the holders of the bonds of the State of Tennessee for more than seven years continuously immediately before the 1st day of January, 1879, under deeds in fee-simple as to the realty and judgments of condemnation as to the right of way.

And further saith not.

S. R. CRUSE.

Subscribed and sworn to before me, this March 20th, 1880.

L. W. HUMES,
Special Examiner.

Deposition of S. R. Cruse.

UNITED STATES CIRCUIT COURT.

WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS ET AL.
On behalf of the holders of Internal Improvement Bonds of Tennessee issued to the Memphis & Charleston Railroad Company.

VERSUS

THE MEMPHIS & CHARLESTON RAILROAD COMPANY ET AL.

Deposition of S. R. CRUSE, witness for defendants, taken in Memphis, Tenn., April 22d, 1880, before L. W. HUMES, Special Examiner, duly appointed under an order of the United States Circuit Court, Western District of Tennessee.

Taken pursuant to agreement.

Present—W. Y. C. HUMES, for Defendants.

S. R. CRUSE being first duly sworn, deposed as follows:

My name is S. R. CRUSE; I live in Memphis, Tenn.; I am now, and have been Secretary and Treasurer of the Memphis & Charleston Railroad Company for about 15 years, holding office here and at Huntsville, Ala., during that time.

Q. 2. Do you know anything about Major M. J. Wicks subsidizing the *Memphis Appeal* to depreciate the credit of the State of Tennessee? If yea, please state all you know about it, and if the Board of Directors found

it out, and if so, please state what action they took in the matter.

Ans. M. J. Wicks, President of the Memphis & Charleston Railroad Company, did pay to the *Memphis Appeal* the sum of seven thousand five hundred dollars for services rendered by said *Appeal*, "for, (as stated in their receipt given by the editors) depreciating the credit of the State of Tennessee." This action of President Wicks was not authorized by the Board of Directors or any member thereof. It was brought to the notice of the Directors by John M. Carmack, a member of the Board, and was by the Board utterly repudiated. It was one of the causes of President Wicks' forced resignation.

Messrs. Humes & Poston, Attorneys, were instructed by the Board of Directors to bring suit against the said M. J. Wicks to recover the money so unlawfully paid by him to the *Memphis Appeal* for the purpose above stated, and did bring suit against said Wicks in the form of a cross action, Wicks claiming payment of said Co. of a note of $5,000 which he held, and which said Co. refused to pay in consequence of payment to said *Appeal* as aforesaid.

During the presidency of said M. J. Wicks, which embraced the period between 1868 and 1873, the Memphis & Charleston Railroad Company did not, so far as I know, purchase any Tennessee bonds for payment to the State Treasurer on its debt to State of Tennessee.

Q. 3. How was the interest paid to the State, and how was the account of the interest kept on the bonds of the State loaned to the Companies?

A. The interest was charged up semi-annually, and was paid in cash, past due coupons of State bonds, and State bonds without reference to the purpose for which the bonds and coupons were issued. I mean to say that

the payment was made in any obligations receivable at the State Treasury, and that there was no restriction as to the character of bonds or coupons so paid in.

It was paid as so much interest on a debt due to the State of Tenn. for a loan made to the Memphis & Charleston Railroad Company by said State. And no attempt was ever made or considered necessary to get up the coupons from the particular bonds which might have been loaned the Co.

And further saith not.

S. R. CRUSE.

Subscribed and sworn to before me, this April 22, 1880.

L. W. HUMES,
Special Examiner.

I, L. W. HUMES, Special Examiner, duly appointed by the United States Circuit Court—Western District of Tennessee, to take the testimony on behalf of the defendants, in the above entitled suit in the State of Tennessee, do hereby certify that the foregoing deposition was taken before me as stated in the caption and reduced to writing and subscribed to by the witness in my presence. Witness my hand, this April 22d, 1880.

L. W. HUMES,
Special Examiner.

1,142.

Deposition of Jno. C. Brown.

UNITED STATES CIRCUIT COURT,

WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS *et al.* on behalf of the holders of Internal Improvement Bonds of Tennessee issued to the Memphis & Charleston Railroad Company

vs.

THE MEMPHIS & CHARLESTON RAILROAD COMPANY *et al.*

Deposition of JOHN C. BROWN, witness for defendants, taken in Nashville, Tennessee, April 23d, 1880, before L. W. Humes, Special Examiner, duly appointed under an order of the United States Circuit Court, Western District of Tennessee.

Taken pursuant to agreement.

Present—W. Y. C. HUMES, for Defendants.

JNO. C. BROWN, being first duly sworn, deposed as follows:

In answer to oral interrogatories, he states:

My name is Jno. C. Brown; I have lived in the State of Tennessee all my life, and am now fifty-

one years of age; I am a lawyer by profession and practice, and my residence is Pulaski, Giles County, Tennessee. From early manhood to the commencement of the war, and then from the close of it up to 1871, I devoted myself almost exclusively to the practice of my profession. I was elected President of the convention that revised the constitution in 1870, and presided over its deliberations. I was the first Governor elected under the new State constitution of 1870, and was inaugurated in 1871, and re-elected and inaugurated in 1873 for a second term. During the years 1869 and 1870, I was thoroughly acquainted with the sentiment of the people of the State. The acts for the sale of the insolvent and defaulting railroads originated in and were produced by a prevalent sentiment throughout the State that such measures would subserve the best interests of the State in retiring a part of its bonded debt, and to the same extent benefit the holders of her bonds. The acts of February 25, 1869, and January 20th, 1870, enabling the solvent roads to retire their debts to the State, originated in and were produced by the same sentiment, and by a sentiment that it would benefit the roads in their depressed condition by enabling them to use the State's first lien on their property to purchase up and pay the State debt in her bonds.

I was intimately acquainted with Dempsey Weaver during the years 1869 and 1870, and my administration as Governor. He was the President of the Third National Bank, and was then and had been for years a leading financial man residing at Nashville. I had frequent conversations with him during the years 1869 and 1870. He was the agent and correspondent of a very large number of the bondholders of Tennessee; he favored and approved for them the acts above referred to, as they would reduce the State debt and thereby increase her ca-

pacity to pay them. The railroads also favored it as measures of relief to them in their broken down condition.

The constitutional convention of 1870 passed no measure discriminating between any State bonds, nor has the Legislature, except as to a few issued to the Mineral Home R. R. Co. During my two terms as Governor, I received an immense number of letters from holders of State bonds from New York, Philadelphia, Baltimore and other places, stating that now the State had reduced her debt, and asking when she was going to resume payment of her interest. The bonded debt of the State had been reduced by the sale of the insolvent roads, and by some of the solvent roads having retired their debts under the acts of 1869 and 1870. I did not preserve their correspondence, but I know the bondholders were clamorous during the whole of my administration for the payment of their interest, and stated the retiring the bonded debt under the acts of 1869 and 1870 as one of the reasons why the State should be the more able to pay their interest. Not one of them ever intimated a right to go upon the railroads, or that this legislation was a violation of their rights. In my second gubernatorial canvass I advocated the funding of the unpaid coupons, and my opponents agreed with me as to this measure. I know Mr. Weaver, as agent of the bondholders, warmly and cordially approved this measure, and many others did also. Immediately after my inauguration in 1873 I sent into the Legislature a message advocating the funding act of 1873, and in that message was given an accurate statement in figures of the amount of State bonds that had been retired by the sale of delinquent roads and settlements with solvent roads under the acts of 1869 and 1870, accompanied also with the Comptroller's report, showing the same facts in detail. Mr. Weaver and

other correspondents of foreign bondholders called at the capitol and got a vast number of these printed messages and forwarded them to the foreign bondholders. I felt it my duty to ascertain thoroughly and accurately whether the bondholders approved or disapproved this funding measure. They approved it almost universally if not entirely so; I never heard of a dissent. After the passage of the measure nearly all of the holders funded their overdue coupons, and registered their old bonds under this act. The sale of the delinquent roads and the purchase of State bands by the solvent roads to settle their debts was publish all over the country, as well as the sale of the substitution bonds of the companies. Never from 1869 to the close of my administration in 1875, did I hear of State bondholders claiming that the State bonds issued to railroads or their coupons were due to them from the companies to which issued or claiming the lien. No such lien was ever set up during my official connection with the State, not even after the panic and financial depression had made it evident that it would be with the utmost difficulty the State could pay her interest, if at all.

I believe at the time of the passage of the acts of 1869 and 1870, and still believe, that the making of the settlements therein provided tended in a great degree to place the State in a position to resume payment of interest upon its entire debt; and the act of 1873, under which the debt was funded and registered, was made likewise, under the confident expectation that the interest would be punctually paid. And this undoubtedly would have been the result but for the subsequent panic and paralysis of the industries of the country. In order to force the several railroads that had not settled under the acts of 1869 and 1870 to do so, I sent either a message or the form of a resolution to the Legislature, re-

quiring the roads te settle in a given time, or, in default, withdrawing the privilege.

And further saith not.

JNO. C. BROWN.

Subscribed and sworn to before me this, April 23, 1880.

L. W. HUMES,
Special Examiner.

I, L. W. HUMES, Special Examiner, duly appointed under an order of the United States Circuit Court, Western District of Tennessee, to take the testimony on behalf of the defendants in the above entitled suit, in the State of Tennessee, do hereby certify that the foregoing deposition was taken before me as stated in the caption, and reduced to writing, and subscribed to by the witness in my presence.

Witness my hand, this April 23, 1880.

L. W. HUMES,
Special Examiner.

1,148.

1,149.

CIRCUIT COURT OF THE UNITED STATES,

SIXTH JUDICIAL CIRCUIT, WESTERN DISTRICT OF TENNESSEE.

IN EQUITY.

CALVIN AMORY STEVENS, EUGENE KELLY, JOHN TERRY and PETER GEDDES, on behalf of the holders of Internal Improvement Bonds of Tennessee, issued to the EAST TENNESSE and VIRGINIA RAILROAD COMPANY.

vs.

THE EAST TENNESSEE, VIRGINIA and GEORGIA RAILROAD COMPANY.

I, A. R. HUMES, hereby certify that the foregoing is a true copy of the records in the above entitled cause, and which are necessary to a hearing in the Supreme Court of the United States, and that the same are prepared according to the request of the solicitors for appellants in this cause.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said Court the 17th day of September, 1881.

A. R. HUMES,
Clerk.

1,150.

114-663

VOL. 3.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~359.~~ 574

CALVIN AMORY STEVENS, EUGENE KELLY, JOHN T. TERRY AND PETER GEDDES,

vs.

THE EAST TENNESSEE, VIRGINIA AND GEORGIA RAILROAD COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF TENNESSEE.

FILED OCTOBER 8th, 1881.

1,150.

114-663

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vs.

THE EAST TENNESSEE, VIRGINIA AND GEORGIA RAILROAD COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF TENNESSEE.

FILED OCTOBER 8th, 1881.

1151

IN THE

Supreme Court of the United States.

CALVIN AMORY STEVENS *et al*,

vs.

EAST TENNESSEE, VIRGINIA AND GEORGIA RAILROAD CO.

No. 359.

It is hereby stipulated that the record in this case upon which the case is to be argued before the Supreme Court of the United States, shall be amended by adding thereto the documents, copies whereof are hereto annexed, which have been omitted by mistake in the record, as heretofore made up and printed; and that upon filing this stipulation, the clerk shall amend the record on file and the printed copies, by making such additions thereto, with like effect, as if the matters so added had been originally included in the return made from the Circuit Court—this stipulation being made to avoid the necessity of correcting the record by means of *certiorari*.

WM. M. BAXTER,

Solicitor for Respondent.

E. L. ANDREWS,

Solicitor for Complainants.

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CIRCUIT COURT OF THE UNITED STATES,

SIXTH JUDICIAL CIRCUIT, WESTERN DISTRICT OF TENNESSEE.

Calvin Amory Stevens, who sues on behalf of himself and other holders of Tennessee State Bonds, issued to the Memphis and Charleston Railroad Company

against

The Memphis and Charleston Railroad Company, and the East Tennessee, Virginia and Georgia Railroad Company.

Same Complainant, on behalf of himself and other holders of Tennessee State Bonds, issued to the East Tennessee and Georgia Railroad Company,

against

The East Tennessee and Georgia Railroad Company.

Same Complainant, on behalf of himself and other holders of Tennessee State Bonds, issued to the East Tennessee and Georgia Railroad Company,

against

The East Tennessee, Virginia and Georgia Railroad Company.

Same Complainant, on behalf of himself and other holders of Tennessee State Bonds, issued to the Knoxville and Kentucky Railroad Company,

against

The Knoxville and Kentucky Railroad Company, and the Knoxville and Ohio Railroad Company.

It is stipulated between the complainant and the

defendants, William T. Walters, on behalf of himself and other holders of bonds of the Memphis and Charleston Railroad Company, and as defendant as trustee of the mortgage of the Knoxville and Ohio Railroad Company, and Charles Burckhardt and others, on behalf of themselves and other holders of bonds of the East Tennessee, Virginia and Georgia Railroad Company, that the following facts are admitted in the above entitled causes, without proof:

First.—That on the 20th of August, 1877, the Memphis and Charleston Railroad Company, a corporation duly created and organized under the laws of the States of Tennessee, Alabama and Mississippi, party of the first part, and the Farmers' Loan and Trust Company, a corporation created by the laws of the State of New York, party of the second part, entered into a certain indenture, or deed of trust, which was duly executed and delivered by the Memphis and Charleston Railroad Company, and registered according to the laws of Tennessee, Alabama and Mississippi, a true copy which is attached to the answer of the said William T. Walters, in the case against said company and others, marked "Exhibit No. 1;" that in pursuance of the provisions of said indenture, the Memphis and Charleston Railroad Company and the Farmers' Loan and Trust Company, on the 21st day of August, 1877, entered into another and further agreement and indenture, known as a tripartite agreement, with Adrian Iselin and Adrian Iselin, Junior, composing the firm of A. Iselin & Co., of the State of New York, parties of the first part thereto, a true copy of which is also attached to said answer, marked "Exhibit No. 2;" that the bonds described and secured by said mortgage, or deed of trust, were duly issued and used for the purposes therein described and authorized, and were sold to purchas-

ers in good faith and for full value, but below their par value; that the certificate of Marshall T. Polk, Treasurer of the State of Tennessee, and of James D. Porter, Governor, and Charles N. Gibbs, Secretary of State, of said State, correct copies of which are set out in said tripartite agreement, being Exhibit No. 2 to said answer, were made as therein alleged; that the said Adrian Iselin and Adrian Iselin, Junior, composing the firm of A. Iselin & Co., did, as therein recited, with the consent and approbation of the Memphis & Charleston Railroad Company, and of its board of directors, pay to the State of Tennessee, in the bonds of said State and coupons of such bonds, at par, which bonds and coupons had been purchased at less than par, the amount of indebtedness of the Memphis & Charleston Railroad Company, claimed by the State to be due to it, and for which it claimed a lien on said railroad, for bonds of the State of Tennessee loaned by it to said railroad company under the internal improvement laws, and for certain other State bonds issued to fund or provide for interest on the amount thereof, during a certain period; that the said William T. Walters is the owner and holder of eighty of said bonds of the Memphis & Charleston Railroad Company for one thousand dollars each, with the coupons thereto attached, referred to in said two deeds, which are a part of the first fourteen hundred thereof, in number being numbered from 1,241 to 1,320, inclusive, the said Walters having purchased the same in good faith and for full value, after the execution of said two deeds; that the said Walters requested the Farmers' Loan and Trust Company, as trustee under said tripartite agreement for his benefit and that of other holders of said bonds, numbered from one to fourteen hundred, and as such claiming to hold the legal interest and title for that purpose of a lien claimed in this case by the com-

plainant for his own use and benefit to cause itself to be made a party defendant in this suit, and defend the same for the interest of the said holders and others similarly situated, which the said Farmers' Loan and Trust Company declined and refused to do.

Second.—That on or about the first day of June, 1870, the East Tennessee, Virginia and Georgia Railroad Company, a corporation organized under the laws of the States of Tennessee and Georgia, party of the first part, and Philo C. Calhoun, Richard T. Wilson, and Adrian Iselin, all citizens of the State of New York, parties of the second part, entered into a certain indenture or deed of trust or mortgage of that date, duly executed and delivered by the said parties, acknowledged and registered according to the laws of the States of Tennessee and Georgia, a true copy of which is attached to the answer of the said Charles Burckhardt and others herein, and marked "Exhibit No. 2;" that on the 11th day of August, 1870, the East Tennessee, Virginia & Georgia Railroad Company made a settlement with the State of Tennessee, for the indebtedness of the said company, claimed to be due to the said State, on account of bonds of said State, loaned and advanced by it to the East Tennessee and Virginia Railroad Company, and the East Tennessee and Georgia Railroad Company, by the payment to said State on that day of the sum of $4,117,761.10 in bonds of the State of Tennessee, and past due coupons thereon, at par, being the entire amount of the indebtedness of the said railroad companies claimed to be due to said State on that account, as of the 1st day of July, 1870, a statement of which debt, and the settlement thereof, certified by Edward W. Pennabacker, Comp-

11561

troller of said State, a true copy of which is set out in "Schedule A," to the answer of the East Tennessee, Virginia and Georgia Railroad Company, to the bill of complaint of the complainant herein; that the whole amount of bonds described in said indenture or deed of trust and mortgage made by the said East Tennessee, Virginia and Georgia Railroad Company to the said Calhoun Wilson and Iselin, as aforesaid, after the date of said settlement of August 11, 1870, were issued and sold and disposed of by the said East Tennessee, Virginia and Georgia Railroad Company, for the uses and purposes therein mentioned, and were negotiated and sold in the city of New York and in Europe, but mostly in Europe, to *bona fide* purchasers, for full value, but less than par, and the proceeds thereof were used to replace moneys borrowed for and used in the purchase of the bonds of the State of Tennessee, delivered to said State in settlement of the said claim of indebtedness of said East Tennessee and Virginia Railroad Company, and the East Tennessee and Georgia Railroad Company, which bonds and coupons of the State of Tennessee, so purchased and used, were bought in open public market, in the city of New York, at the prevailing market rates, but below their par value, and were delivered to and accepted by the State of Tennessee, through its comptroller, in satisfaction of said debt claimed to be due to the State from the said companies as aforesaid, on account of internal improvement bonds of said State originally loaned and advanced to the said East Tennessee and Virginia, and the East Tennessee and Georgia Railroad Companies; that the said Charles Burckhardt, Henry Saladin, Charles Diggelman, Victor Fauche and Caroline Tschraur, purchased and still hold of said bonds the sums named in their said answer respectively, and that the said respondents whose

names are in the list marked "Exhibit No. 1," attached to said answer, each purchased and still holds of said bonds the several amounts set opposite their respective names in said list, and that they were and are *bona fide* purchasers and holders of said bonds, having bought the same in good faith and for full value, but below par. That the said Burckhardt and others requested the said Calhoun, Wilson and Iselin, trustees, as aforesaid, under the said mortgage, to take the necessary steps to protect the interest against the claim of the complainant and other holders of Tennessee State bonds, by making themselves defendants in this case, which the said Calhoun, Wilson and Iselin declined to do.

Third.—That the Knoxville and Ohio Railroad Company, a corporation duly created and organized under the laws of the State of Tennessee, has acquired the legal and beneficial title and possession of the Knoxville and Kentucky Railroad, and of all the property pertaining thereto, formerly belonging to the Knoxville and Kentucky Railroad Company, by virtue of the judicial proceedings set forth in the answer herein, filed by the said the Knoxville and Kentucky Railroad Company, and of the Knoxville and Ohio Railroad Company, a record of the proceedings of which it is agreed may be read herein; that the Knoxville and Ohio Railroad Company having thus acquired title to the said property, did, on the 1st day of January, 1876, enter into a certain indenture or deed of trust and mortgage, as party thereto of the first part, to and with Richard T. Wilson, a citizen of the State of New York, and William T. Walters, a citizen of the State of Maryland, parties of the second part, which was duly executed and delivered, acknowledged and registered, as required by the laws of the State

of Tennessee, a true copy whereof is attached to the answer of the said William T. Walters, herein, marked "Exhibit No. 1;" that the whole amount of bonds mentioned and described in the said deed of trust and mortgage, have been duly issued by the Knoxville and Ohio Railroad Company, and have been sold for full value, but below par, in the public and open market, in the city of New York and elsewhere, to *bona fide* purchasers, and are now outstanding.

Fourthly.—The stipulation of even date herewith signed by George Hoadly, solicitor for complainant, and Stanley Matthews, solicitor for respondents, in the five cases brought in the Middle and Western Districts of Tennessee, against the Louisville and Nashville Railroad Company and the Nashville and Decatur Railroad Company, and others, is hereby made part of this stipulation, as fully as if herein again set forth, and so far as the agreements and recitals thereof are applicable to these cases they are to bind us in these cases.

IN THE

CIRCUIT COURT OF THE UNITED STATES,

FOR THE MIDDLE DISTRICT OF TENNESSEE.

Calvin Amory Stevens, who sues for himself and other holders of the Bonds of the State of Tennessee issued to the Louisville and Nashville Railroad Company,

vs.

The Louisville and Nashville Railroad Company and John B. Smith.

Same, upon Bonds issued to the Tennessee and Alabama Railroad Company,

vs.

The Nashville and Decatur Railroad Company, Charles Diggleman, and others.

Same, upon Bonds issued to the Central Southern Railroad Company,

vs.

Same defendants.

IN THE CIRCUIT COURT,

FOR THE WESTERN DISTRICT OF TENNESSEE.

Same upon Bonds issued to the Memphis, Clarksville and Louisville Railroad Company,

vs.

The Louisville and Nashville Railroad Company and John B. Smith.

Same, upon Bonds issued to the Memphis and Ohio Railroad Company,

vs.

Same Defendants.

IN EQUITY.

It is hereby stipulated and agreed by and be-

tween the parties hereto, being parties to the above-entitled suits, in order to avoid the trouble, expense and delay of formal proof, that the following may be taken and held to be proven as facts in each of said causes, so far as applicable thereto, but subject to all proper objections for incompetency or irrelevancy.

1. The stipulation dated August 14, 1879, signed by E. L. Andrews, solicitor for complainants, and Ed. Baxter, solicitor for respondents, is to be taken as part of this agreement as fully as if recited and again set forth herein.

2. Either party shall be at liberty to use any or all of the depositions taken in any or all of the cases now pending in the Circuit Courts of the United States for the Eastern, Middle and Western Districts of Tennessee, brought by the said complainant, or by him and others, to enforce the lien reserved by the internal improvement laws of said State against divers railroad companies, so far as the testimony therein contained may be competent and relevant herein. A list or statement of such depositions shall be furnished by the party using the same to the other at the hearing, and printed copies of such depositions shall be filed in any case in which the same may be used.

3. Either party shall be at liberty to file in any of these causes a copy of the whole or any part of a printed compilation of laws, records and documents made under the complainant's directions, containing 390 printed pages, and either party may read as evidence, without further proof, such parts thereof as they may see fit, subject to all proper objections, on the ground of incompetency or irrelevancy.

4. It is further agreed that the Louisville and Nashville Railroad Company is a body corporate and politic, chartered by the acts of the General

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Assembly of the Commonwealth of Kentucky. The right of way to construct its railroad from the line between the States of Kentucky and Tennessee to Nashville was granted it by the acts of the General Assembly of Tennessee, but it has never been incorporated by said State, and, therefore, is not a citizen thereof, but of the State of Kentucky; that the object and purpose of the creation of said corporation by the said charter and laws, was the construction, completion, and thereafter the operation and management, among others, of a line of railway for the transportation of passengers and freight, from the city of Louisville, in the State of Kentucky, to the city of Nashville, in the State of Tennessee. For this purpose such powers were granted to said corporation as are declared in the several charters and acts of incorporation of Kentucky, and acts giving it a right of way and to transact business in the State of Tennessee. The said corporation was authorized to borrow money for the purposes of the enterprise. It was likewise authorized to impose liens and execute mortgages upon its property to provide for and insure the payment of its liabilities.

That all bonds of the State of Tennessee loaned to railroad companies under the act of the General Assembly of the State of Tennessee, passed February 11, 1852, and the acts amendatory and supplementary thereto, including those loaned to the Louisville and Nashville Railroad Company, were sold in the market as straight Tennessee State bonds, as distinguished from bonds of railroad companies, indorsed or guaranteed by the State; that what were known in the market by the public as straight Tennessee bonds, the said bonds, including those loaned to the Louisville and Nashville Railroad Company, sold before the war, at the following prices:

While bonds of other descriptions, on which the railroad companies were bound as principals, and the State of Tennessee as surety, were sold at the following prices:

That the Louisville and Nashville Railroad Company received from the State of Tennessee her six per cent. coupon bonds, at the times and in the amounts following, and none others, and at no other dates, namely:

Received April 30, 1858, 50 bonds amounting to $50,000.

Received April 30, 1858, 150 bonds amounting to $150,000.

Received April 30, 1858, 100 bonds amounting to $100,000.

Received July 15, 1859, 150 bonds amounting to $150,000.

Received April 20, 1861, 5 bonds amounting to $5,000.

Said bonds, to the amount of five hundred and sixty thousand five hundred dollars, were received by or on behalf of the Louisville and Nashville Railroad Company, through properly appointed officers, and were by said company negotiated and sold, in pursuance of law, to *bona fide* holders, but none were received prior to April 30, 1858. The proceeds of these bonds were applied as directed by the laws under which they were loaned to said railroad company; that the State of Tennessee has failed to pay to the holders of its bonds and coupons thereon, representing interest accruing thereon, which became due on the first day of July, 1876, and all falling due since that date, and is in default therefor; that, on May 5, 1865, the General Assembly of the State, by joint resolution, appointed the comptroller, secretary of state, attorney-general, and commissioner of public works, a board to make a settlement with the Louisville and Nashville Railroad Company, and if a satisfactory settlement could not be obtained, the governor was authorized to have instituted such legal proceedings as might be necessary to protect the interests of the State. On the 18th of November, 1865, said commissioners reported to the legislature that they had effected a settlement: that the bonds loaned said company by the State amounted to $560,000, and the overdue interest thereon to $147,131.25; that the company had proposed to pay the entire principal in straight six per cent. coupon bonds of the State and the interest in coupon bonds of the State then due. The commissioners say: "Believing it to be manifestly for the interests of the State to call in this large installment of its indebtedness,

and believing moreover, that the company had a right under the law regulating the sinking fund to pay off its entire indebtedness in the bonds of the State, your commissioners accepted the proposal, and executed to the company a receipt dated November 17, 1865, for $707,631.25 in bonds and coupons of the, being the total indebtedness of said company to the, State of Tennessee on account of the bonds of the State received in aid of the construction of said road and the bridge across the Cumberland river." True copies of said resolution and report are annexed to the answer filed by John B. Smith in the first of said cases; that the said railroad company actually delivered said bonds and coupons as in said receipt is recited; that at the time this settlement was made in 1865, the State was in default for non-payment of the interest on its bonds from July, 1861; that the bonds and coupons paid by the Louisville and Nashville Railroad Company to the State of Tennessee in the said settlement, were not the identical bonds and coupons originally advanced and loaned to said company and by it negotiated and sold, but that the same, in part at least, were other bonds and coupons of the State of Tennessee; that, at the time said settlement was made, the war had but recently prior thereto definitely closed. During the period of actual military operations, the railroads had been the the prize of contending armies, as instruments of offense and defense. In the course of the struggle, they had been stripped of their equipment, and parts of them destroyed and repaired, and, in some cases, built and extended, by the United States Government, to fit them for military use, but so that when they were finally restored, on or about August, 1865, to their owners, they were destitute of rolling stock, cars, machinery, shops, and tools, and almost every thing needed for an

equipment, nearly every thing of that description then in actual use upon the roads being the property of the United States, furnished and employed for its military uses This they were permitted to purchase and did so in pursuance of executive orders issued by the President of the United States in September and October of that year, but being unable to pay cash, gave their obligations for the purchase money payable in installments and bearing interest. The roads themselves, their road beds, tracks, trestle-works, bridges, and permanent works of every description, were, to a greater or less extent, out of repair, in need of restoration, in some instances in a state of actual dilapidation. Business of every kind had been largely suspended by the war, except military transportation, and now, that employment ceased with the cessation of hostilities, but the fruits of peace, in the revival of industry and trade, could only come with the lapse of time, and the gradual accommodation of the community to the new order of things. The general result was that the railroads required large sums of money to put them in a condition to earn an income, and, after that, would have to wait the slow operation of general causes upon the social condition of the people, before any revival of trade would renew their sources of revenue. In the meantime, a large arrearage of debt, for unpaid interest, had accumulated by reason of the default, during the whole period from July, 1861, both of the State and the railroad companies, in consequence of which the State securities had become discredited in the markets of the world.

It is, however, admitted that the said facts of depreciation of property and credit are true to a less extent of the main line of the Louisville and Nashville Railroad between Louisville and Nashville, than of the other railroads in Tennessee; that about

the time said settlement was made with the Louisville and Nashville Railroad Company, to wit, on November 8, 1865, the General Assembly of the State of Tennessee, by joint resolution, appointed a joint committee to examine into the condition of the sinking fund; that every holder of bonds of the State of Tennessee originally issued under the internal improvement laws, including the complainant, so far as he then owned said bonds, and his predecessors in ownership of the bonds since acquired by him, accepted the provisions of the act of November 23, 1865, delivering to the State the overdue and unpaid coupons of said bonds, which had matured from July 1, 1861, to January 1, 1866, and receiving in exchange therefor the said State bonds, authorized thereby; that, after the proceedings and legislation of the State of Tennessee, hereinbefore and in the pleadings set out, including said settlement with the Louisville and Nashville Railroad Company of November 17, 1865, and the passage of said act of November 23, 1865, the market price of the bonds of the State of Tennessee, in the city of New York, rose from about fifty cents on the dollar in the month of March in that year to ninety-two cents on the dollar in the month of December in the same year; that many of the railroad companies were unable to provide the means to meet the interest falling due on the 1st of July, 1867, which by law they were bound to provide, and failed to do so, to the extent of nearly $800,000, but that the State nevertheless paid the whole amount of interest falling due on that date on its bonds to the holders thereof; that all the holders of the bonds of the State, including the complainant and his predecessors in the ownership of any he now holds, and those associated and acting with him in the prosecution of this and similar suits, and their predecessors in such ownership,

accepted the provision of these acts and funded their overdue coupons, and received payment of current accruing interest after January 1, 1874 to January 1, 1876, in accordance with the terms of the act of the General Assembly of the State of Tennessee, passed March 17, 1873, and particularly that they registered their bonds in compliance with the provisions of the ninth section of said act ; that in the meantime, on the tenth day of November, 1868, the Governor of the State had informed the General Assembly that six railroads in the hands of Receivers were at that time indebted to the State on interest account due July 1, 1868, one million one hundred and twenty thousand nine hundred and ninety-six dollars and eighty-six cents, and stated that he would have seized two other roads for failure to pay the July interest of that year, and placed them in the hands of Receivers, but that he had learned by experience that to do so would only entail increased burdens upon the State Treasury, and expressed the opinion that the interest of these roads as well as that of the State, required that they should be sold, and the proceeds thereof applied to the reduction of the State debt. In the same message, he said :

" Leading gentlemen, connected with important railroads largely indebted to the State are asking for authority to issue second mortgage bonds, with a view of exchanging them for State bonds. Thus purchasing State bonds by the avails of these second mortgage bonds, the debt now due by the State would in like amount be transferred to these rail road companies, and so the State would be relieved of a burden of several million of dollars of debt now resting upon it. I regard this proposition with approval, and advise its adoption by the Assembly. The payment of large debts now due from the roads alluded to, and the sale of the roads already

in the hands of Receivers, would reduce the State liabilities at least one-third."

That at the session of the General Assembly in 1871, the Governor, in his message to that body, stated that under said act of February 25, 1869, as amended by the act of January 20, 1870, ch. 44, over eight million of dollars in the bonds of the State had been retired and canceled; that other roads had purchased and were then purchasing bonds with which to cancel their liabilities to the State under the said acts, and in order to prevent further delay on the part of solvent roads that had not retired their indebtedness to the State under said act, recommended that the act be either repealed to take effect at some future time not remote, or that its provisions be so amended as that the roads be required to pay all accrued interest as well as the sinking fund not theretofore paid in. In the same document the Governor also stated that but three of the delinquent railroads remained unsold, and added: "It will be a gratifying result when the State is entirely divorced from the railroad system. And, although the sales will not realize all that was desired, and leave a large debt to be provided for, yet the internal improvement system of Tennessee had added millions to her wealth and diffused such energy and enterprise into every class of society, that no intelligent man can regret the policy which inaugurated the system, notwithstanding a large amount of appropriations made since the war have been improperly expended."

That the several railroad companies to whom loans of internal improvement bonds had been made and the State of Tennessee dealt together under the said acts of February 25, 1869, and of January 20, 1870, according to the terms thereof (except as to settlements made prior to the passage of said acts), the various railroad companies who were able

to do so, and who were on that account called solvent, purchasing in the open market, at the market price, bonds of the State of Tennessee, without discrimination as to their description, or on what account, or to whom issued, and in order to raise the means so to do, the said railroad companies issued their own bonds, secured by mortgages on their railroad property as a first lien thereon, or in accordance with the said acts of 1869 and 1870, and the same were sold in the markets of this country and of Europe, to purchasers for value, to the amount of many millions of dollars, now outstanding; and that those railroads, known as delinquent railroads, the corporations owning which were not able thus to liquidate their indebtedness to the State, were sold by the authority of the State, by virtue of judicial decrees, rendered in a proceeding instituted and prosecuted by the State under and according to the provisions of the act of December 20, 1870, a printed copy of the record of which either party is at liberty to file in said causes, and to use as evidence so far as relevant and competent; and the purchasers thereof paid for the same, as by said act and decree they were authorized to do, in any bonds of the State.

That by virtue of said dealings and transactions, and in consequence thereof, the result, in regard to the reduction of the public debt reached, was as follows: The total bonded debt of the State, including $13,782.000 of funding bonds issued under the acts of 1866, 1868, and 1873, amounted to $49,173,316.66. Of this, $29,251,250.00 represented the amounts of internal improvement bonds loaned to railroad companies, but not including the unpaid interest thereon, embraced in any series of funding bonds. The amount of $28,163,016.66 have, under the various acts aforesaid, been surrendered and canceled; and of them $16,265,000 were internal

improvement bonds loaned to railroad companies, and $4,326,000 were funding bonds under the acts of 1866 and 1868. The account between the State and the two descriptions of railroads, is as follows:

First.—Defaulting railroads sold:

Bonds issued	$14,628,000.00
Int. funded, 1866	1,122,306.00
Int. unpaid, July, 1870	3,331,163.12
U. S. claims assumed	511,560.00
Total	$19,593,029.12
Amount realized by sale	6,698,000.00
Loss to State	$12,895,029.12

Second.—Roads which have settled their indebtedness:

Bonds issued	$12,742,000.00
Int. funded January, 1866	1,850,768.00
Sinking fund paid	493,306.00
Unaccounted for	1,255,700.00

The particulars of which are truly stated in Exhibit No. 5 to the answer of John B. Smith, in the *fourth* of said cases; that, during the whole period of these transactions, from and including the settlement between the State and the Louisville and Nashville Railroad Company, beginning in May, 1865, and during the whole progress of this legislation, and of the liquidation, arrangements, and settlements authorized and required by it, and of the dealings between the railroad companies and the State, and of the railroad companies in borrowing money on the security of mortgages on

their property, on the faith that all prior liens on account of the loans by the State of internal improvement bonds had been thereby removed and discharged, the holders of the bonds of the State of Tennessee, in general, had knowledge of all that was taking place; the facts themselves were public, historical, and notorious, and the holders of Tennessee State bonds, in the year 1870, formed a voluntary organization, represented by a committee, for consultation and cooperation in matters of common interest, and kept themselves well advised of each step in the history of the business; and on or about May 1, 1870, said bondholders, through their committee, of which J. J. Donaldson, Esq., was chairman, obtained a legal opinion from Hon. Henry E. Davies and Noah Davis, eminent counsel of the city of New York, affirming that they were owners of a lien under the act of 1852, upon each railroad, for the specific payment of the identical bonds issued to that railroad company, by virtue of a contract, protected by the Constitution of the United States; which opinion was printed in pamphlet form, and not otherwise, and circulated among holders of Tennessee State bonds, and others. That said bondholders took no action upon said opinion, and their committee ceased to exist in 1873. That, in 1877, a similar organization was formed of Tennessee State bondholders, and has been kept up ever since, and that the present suit, and other similar suits now pending, are prosecuted in the name of the complainants, by a committee of such organization.

That at no time did the said holders of Tennessee State bonds, or any one of them, including the complainant or those associated and acting with him in the prosecution of this and similar suits, ever make any demand upon any railroad com-

pany for the payment of any interest on the said bonds, or receive from any railroad company payment of any coupon, or make any objection to any of the acts of the State of Tennessee, inconsistent therewith, or object to the passage thereof, or oppose any payment, settlement, and liquidation, by any railroad company, of its indebtedness to the State, until in May, 1877, at Memphis, in the Circuit Court of the United States, and in April, 1878, at Washington City, in the Supreme Court, it was contended by pleadings and argument, in the case of *Duncan et al.* v. *Merian et al.*, involving the foreclosure of the Mobile and Ohio Railroad, and the marshaling of liens thereon, on behalf of said committee, that the holders of said State bonds were and are entitled to a prior lien, in accordance with the said opinion of said Judges Davies and Davis; that on the 16th day of January, 1878, there was held, in the city of New York, a meeting of holders of Tennessee State bonds, the call for which was signed by the complainant, and others with whom he was then acting, and with whom he is still associated, and who, jointly with him, are prosecuting this and similar suits—namely, Eugene Kelly, Peter Geddes, John T. Terry, and others—and at which they were present and participating, and at which the following preamble and resolutions were adopted, viz:

"*Whereas*, On the 8th March, 1877, at a meeting between a committee of five members of the Tennessee legislature (of which Col. John H. Savage was chairman), and a committee of arbitration (of which Mr. George S. Coe was chairman), to whom had been referred the question of a fair and equitable adjustment between the Southern States in default and their bondholders, the debt of the State of Tennessee was fully discussed, with a view of ascertaining and determining what a

fair and equitable adjustment of it would be; and,

"*Whereas*, At the conclusion of the conference between the committee of the Tennessee legislature and the committee of arbiters, the committee of arbiters made an award that the debt of the State of Tennessee ought to be readjusted by the issue of new bonds, at the rate of sixty per cent. of the total amount of the debt and interest, the new bonds to bear interest at six per cent., payable semi-annually, and the coupons for interest to be made receivable for all taxes and dues to the State; and,

"*Whereas*, The session of the legislature expired by constitutional limitation a few days after the award of the arbiters was rendered, and there was not time to enact a law to give it effect; and,

"*Whereas*, It was very generally understood than an extra session of the legislature would be convened to accept a proposition from the bondholders to compromise the State debt, on the terms of the award of the committee of arbitration, and to enact a law to fully carry it out, the holders of a very large amount of bonds of Tennessee did make and send to the governor propositions of compromise on the terms of said award, and the governor did thereafter convene the legislature in extra session to consider said proposition; and,

"*Whereas*, During the sitting of the legislature, the intervention of other parties, proposing and advocating before it other and different terms of settlement than those considered by the committee of the legislature and the committee of arbitration, and awarded by the latter committee, and agreed to by the bondholders, was prejudicial to the interests of the State of Tennessee, and to her creditors, in so far as it has delayed a settlement; and,

"*Whereas*, The bond holders of Tennessee had neither an agent nor other person to represent

them before the legislature, but confided in the legislature, and fully expected that the senators and representatives of the people of Tennessee would ratify and confirm the award of the distinguished and disinterested gentleman who had acted as a committee of arbitration, and accept the proposition of the bondholders made in accordance therewith, unhesitatingly; therefore,

"*Resolved*, That efforts made by any person who purported to represent the bondholders of Tennessee were entirely unauthorized, and that the declaration alleged to have been made at Nashville, that a settlement could be effected with the bond holders upon a lower basis than that proposed by the committee of arbitrators, of which Mr. George S. Coe is chairman, has no foundation in fact, so far as it relates to the great body of bondholders.

"*Resolved*, That while we deplore the attitude assumed by the legislature, while assembled at Nashville, in December, toward the bondholders, we believe that it resulted from the influence and and unwarrantable interference of other parties than real bondholders, or their representatives.

"*Resolved*, That we have an abiding belief that the people of the great State of Tennessee will not, by the rejection of honest claims which they are abundantly able to pay, suffer a stigma long to rest upon them; the effect of which will be to paralyze the prosperity of the State, subvert its best interests, and engender that demoralization which must ultimately result in losses to its citizens, even far greater than to its creditors.

"*Resolved*, That the people of Tennessee be urged to adopt such legislation as will uphold the honor of the State, and evince proper regard for for the high integrity which has hitherto characterized her citizens.

"*Resolved*, That a committee of five be appoint-

ed, consisting of Eugene Kelly, John T. Terry (of E. D. Morgan & Co.), J. G. K. Duer (of James G. King's Sons), Peter Geddes (of Geddes & Smith), and Dr. R. S. Moran—Eugene Kelley to be chairman—to take such action as, in their judgment, may be to the interest of the bondholders; but with the understanding that no settlement less favorable than the award of the committee of arbitration be accepted.

And this respondent says that on the 11th day of December, 1877, the complainant, C. Amory Stevens, had addressed, by telegraph, from New York, to the Governor of Tennessee, a communicaton, which was laid before the general assembly then in session, as follows:

"NEW YORK, Dec. 11, 1877.

"GOVERNOR JAMES D. PORTER:

"I am a large holder of Tennessee bonds, which have been held for years strictly for investment account. I was a signer of the former petition, sent you through the committee of arbitration; and while I would prefer to have that proposition accepted, yet, if it would require a revenue bill that is deemed by the Legislature to be higher than the State can afford to pay without seriously retarding the prosperity of the people, I prefer to change the original offer, and hereby do change it. I propose to take fifty cents on the dollar. I think this dispatch represents the sentiments of most of the investment holders. They recognize the embarrassed condition of the State, growing out of the war, and are willing to meet the situation in a spirit of liberality, and now ask the Legislature, through your excellency, to reciprocate this feeling, and make a settlement without further delay.

"Please submit this to the Legislature for its action.

"THE ESTATE OF CALVIN STEVENS,

"C. AMORY STEVENS,

"*Trustee.*"

That the public debt of the State of Tennessee, which was the subject of these communications and propositions, amounted at that time, as reported to the General Assembly by the Governor, in the same message which transmitted the proposition made through the committee of arbitration, to twenty-three millions two hundeed and twelve thousand six hundred and six dollars, on the first day of January, 1878, and which consisted partly of bonds issued under the internal improvement acts of 1851, 1852, and the amendments thereto, and those issued for past due interest, and known as funding bonds, and partly of bonds of the State issued for turnpike, capital, and agricultural bureau purposes, and the purchase of the Hermitage.

That on the 21st day of February, 1868, the Legislature of the State of Kentucky passed an act entitled "An Act to amend the charter of the Louisville and Nashville Railroad Company, approved March 5, 1850," a true copy of which act is annexed to the answer of John B. Smith in the *first* named of said causes.

That on or about the 1st day of April, 1868, the Louisville and Nashville Railroad Company, in pursuance of the authority conferred by said act, which had been duly accepted by it, executed and delivered its certain indenture of mortgage of that date, made by and between said company, a duly organized corporation of the State of Kentucky, party of the first part, and James Punnett and Junius B. Alexander, trustees, party of the second part, a true copy of which, except the signatures

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and acknowledgment, is annexed to the answer of John B. Smith, in the *first* of said causes, as Exhibit No. 4, thereof; that since the execution and delivery thereof, as aforesaid, the said James Punnett, named therein as one of the grantees, has deceased, and this respondent, a citizen of the State of Kentucky, has been duly appointed in his stead, and has accepted said trust, and has been, so far as necessary, acting in execution thereof, that of said eight million loan, authorized and secured by said mortgage, there have been issued and are now outstanding bonds of said Louisville and Nashville Railroad Company to the amount of seven million and fifty-nine thousand dollars, and of that amount two million four hundred and thirty-three thousand dollars were used by the purchase of Tennessee State bonds, for the purpose of paying the State of Tennessee in part the indebtedness claimed to be due from the Memphis and Ohio and the purchase money of the Memphis, Clarksville and Louisville Railroad Company, and which were so used in pursuance of the terms and plan, according to which said companies, under the authority of the laws of Kentucky and Tennessee, have become consolidated with or owned by the Louisville and Nashville Railroad Company; that said consolidation and purchase were contemplated, as part of its purposes, by said act of the General Assembly of the Commonwealth of Kentucky, of February 21, 1868, but the same was not consummated until after the passage of said acts of the General Assembly of Tennessee, of 1869–70, heretofore referred to, and that the bonds of said Louisville and Nashville Railroad Company, of said eight million loan secured by said mortgage, the proceeds of which were used in the purchase of Tennessee State bonds for the purposes aforesaid, were issued and negotiated in the city of New York, during the year 1870, and the

Tennessee State bonds, purchased therewith, were bought in New York, in open market, at market prices then current, during the period from January 1, 1870, to May 31, 1871; that said deed of trust and mortgage was executed and has been duly registered in accordance with the laws of Kentucky and Tennessee.

That on or about the 1st day of November, 1873, the Louisville and Nashville Railroad Company, a corporation authorized thereto by the laws of Kentucky and Tennessee, executed and delivered its indenture of mortgage of that date to Henry F. Vail, a citizen of the State of New York, and to said John B. Smith, a true copy of which, except the signatures and acknowledgment, is attached to the answer of John B. Smith in the *first* of said causes as Exhibit No. 5, which mortgage was duly registered in the proper offices in the city of Louisville, and in the counties in which said railroad lies; that soon after the execution and delivery of this deed of trust or mortgage the Louisville and Nashville Railroad Company negotiated, issued and sold of the bonds thereby secured, two millions of dollars for full value, but less than par, to purchasers thereof; that the said The Louisville and Nashville Railroad Company, having purchased and acquired the title to the railroad and other property of the Memphis, Clarksville and Louisville Railroad Company, and the same having become by said purchase a part of its line and property on the 15th day of July, 1872, by a certain indenture of that date made between the said Louisville and Nashville Railroad Company, a corporation created, organized and existing by and under the laws of the State of Kentucky, and likewise existing and recognized and possessing chartered rights and privileges by and under the laws of the State of Tennessee, party of the first part, and this respondent, of Louisville, in

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the State of Kentucky, and Junius B. Alexander, of the city of New York, parties of the second part, a true copy of which, except the signatures and acknowledgment thereof, is attached to the answer of John B. Smith, in the *fourth* case above named, as Exhibit No. *one* thereof; that said mortgage or deed of trust was duly executed by the parties thereto, in conformity with the law of the States of Tennessee and Kentucky in that behalf, and was duly registered and recorded as required thereby; that all said twenty-five hundred bonds of two hundred pounds sterling, with coupons attached, as described in said mortgage, were negotiated and sold, and the proceeds thereof received by the Louisville and Nashville Railroad Company, in the city of London, in England, for full value, but less than par, to purchasers thereof

That there was delivered to the Memphis, Clarksville, and Louisville Railroad Company, on account of their railroad, various internal improvement bonds of the State of Tennessee; that said bonds, to the amount of one million five hundred and eighty-two thousand dollars, were received by or on behalf of the Memphis, Clarksville and Louisville Railroad Company, either through its own officers, or by Receivers in possession of its railroad, under appointment of the governor of the State, and were by said company, or by said Receivers, negotiated and sold, in pursuance of the law, to *bona fide* holders, but none prior to March 18, 1858, and the proceeds of said bonds were applied as directed by the laws under which they were issued; that of said sum of one million five hundred and eighty-two thousand dollars of State bonds, issued as aforesaid, in aid of the Memphis, Clarksville and Louisville Railroad, the amount of one million and forty-two thousand dollars thereof was issued to said company, in various

sums and at different times, between the 17th day of March, 1858, and the 21st day of February, 1861, and all were issued under the provisions of the act of February 11, 1852, and acts amendatory thereof; and that forty thousand dollars of said bonds were issued to said company on March 27, 1866, under the provisions of the act of February 8, 1854, amendatory of said act of February 11, 1852, and four hundred thousand dollars thereof were issued to G. T. Lewis, a Receiver in possession of said railroad, by appointment of the Governor of the State, between April 14, 1866, and June 13, 1866, as provided in the act of January 18, 1866, to amend said act of February 11, 1852, and one hundred thousand dollars thereof, as authorized by the act of May 24, 1866, to incorporate the Tennessee Pacific Railroad Company, and for other purchase, by the terms of which last mentioned act the governor was authorized to execute a bond for the purpose of railroad machinery, cars, and all other material purchased for the use and benefit of the Memphis, Clarksville and Louisville Railroad from the United States Military Railroad Department at Nashville, of the United States; that the State of Tennessee has failed to pay the interest accruing on its outstanding bonds since the 1st day of July, 1876, having failed to pay the coupons falling due on that day; that the Memphis, Clarksville and Louisville Railroad Company did not pay interest accruing upon its said indebtedness, but failed to do so, and to pay the amounts required by the said several laws on account of the sinking fund, and became and was in default by reason thereof, so that it was claimed by the State that on the 1st day of January, 1871, the said Memphis, Clarksville and Louisville Railroad Company was indebted to the State, on account of said interest in arrear, in the sum of eight hundred and seventy-two thousand

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one hundred and twenty-five dollars and ninety-two cents, besides four hundred and ninety-nine thousand six hundred and sixty-nine dollars and ninety cents, on account of the purchase of machinery, cars, and material from the United States, authorized as aforesaid by the act of May 24, 1866, making the aggregate of indebtedness, claimed by the State, of that date, for which said company was liable to it, of two million nine hundred and fifty-three thousand seven hundred and ninety-five dollars and ninety-two cents.

That the bonds authorized by the act of the General Assembly of the State of Tennessee, passed February 1, 1860, and called second mortgage bonds were issued by said company, and negotiated, that they are the same referred to in the mortgage of the Louisville and Nashville Railroad Company, to the said John B. Smith, and the said Junius B. Alexander, of the 15th day of July, 1872, as having been purchased by the Louisville and Nashville Railroad Company, and by it conveyed to them.

That on the 1st day of June, 1871, the Memphis and Ohio Railroad Company, party of the first part, executed and delivered its certain deed of indenture of that date, to and with John B. Smith, of Louisville, in the State of Kentucky, and James W. Alexander, of the city and State of New York, parties of the second part, a true copy of which is attached to the answer of John B. Smith in the case of the complainant suing upon bonds of the State of Tennessee, issued in aid of the construction of the Memphis and Ohio Railroad, which deed, it is admitted, was duly registered according to the laws of the State of Tennessee; that said thirty-five hundred bonds, described in and secured by said deed and mortgage, were duly issued by said railroad company, negotiated and sold to *bona fide* purchasers, for full value, but at less than par, and

that the proceeds of the sale of the said bonds, which were indorsed before negotiation by the Louisville and Nashville Railroad Company, were used to replace advances made by the said company for the Memphis and Ohio Railroad Company, and for the purchase of bonds of the State of Tennessee, which the State of Tennessee received in discharge of the indebtedness claimed to be due from said railroad company to it; and, afterward, the Memphis and Ohio Railroad Company was consolidated with the Louisville and Nashville Railroad Company, and the said mortgaged property became vested in the Louisville and Nashville Railroad Company, and that payments of interest accruing on the indebtedness of the Memphis and Ohio Railroad Company claimed to be due to the State of Tennessee, were regularly made by said Louisville and Nashville Railroad Company, then in possession of the Memphis and Ohio Railroad, as lessee thereof, to the State of Tennessee every six months from July, 1867, to July, 1871, each of which semi-annual payments amounted to $71,883.30, and were made partly in cash, and partly in past due bonds and coupons of the State of Tennessee.

That, on the 1st day of July, 1870, the Nashville and Decatur Railroad Company entered into an indenture with Philo C. Calhoun, Richard T. Wilson, and Adrian Iselin, then and now citizens of the State of New York, parties of the second part, a true copy of which is filed as "Exhibit No. 2" to the answer of Charles Diggelman and others, in the case of the complainant suing upon bonds of the State of Tennessee, issued in aid of the construction of the Tennessee and Alabama Railroad, which indenture was duly registered in pursuance of the laws of the State of Tennessee; that the Nashville and Decatur Railroad Company is a corporation of the States of Tennessee and Alabama, formed by

the consolidation of the Tennessee and Alabama Railroad Company, the Central Southern Railroad Company, and the Tennessee and Alabama Central Railroad Company; that the bonds of the Nashville and Decatur Railroad Company, secured by the said mortgage to said Calhoun, Wilson, and Iselin, were issued for the purposes therein authorized, and were negotiated and sold in the city of New York, to *bona fide* purchasers, for full value, but at less than par, and the proceeds thereof used for the purchase of bonds and coupons of the State of Tennessee, bought in open public market in said city, at the prevailing market rates, and which were afterward delivered to and accepted by the State of Tennessee, at par, through its comptroller, in payment of and satisfaction for the debt claimed to be due the State from said companies, on account of said internal improvement bonds originally loaned to them; that the respondents, Charles Diggleman, Marius A. Sorchan, and Sophie Milius von Willer, purchased and held the amount of bonds stated in their answer, respectively, in good faith and for full value, but at less than par; and that the several respondents, whose names are in the list, marked "Exhibit No. 1," attached to the said answer, each purchased and still holds of said bonds the several amounts set opposite their respective names in said list, in good faith and for full value, but at less than par; a true copy of one of said bonds is set out in "Exhibit No. 2" to said answer. That the Nashville and Decatur Railroad Company made a settlement with the State of Tennessee, through its comptroller, of its debt claimed to be due to said State on account of the bonds of said State issued in aid of the construction of the Tennessee and Alabama, and the Central Southern Railroad, and the interest thereon, as made up and adjusted to January 1, 1871, in the sum of $2,702,-

997.10, as shown in "Exhibit No. 3" to said answer, which is a correct copy of the original, which was paid in bonds and coupons which had been purchased at less than par.

"Exhibit No. 4," attached to the answer, is a true copy of the lease of the Nashville and Decatur Railroad Company to the Louisville and Nashville Railroad Company.

GEORGE HOADLY,
On behalf of Complainants.

STANLEY MATTHEWS,
On behalf of John B. Smith, Charles Diggleman, and others, Defendants.

United States Circuit Court, 1

MIDDLE DISTRICT OF TENNESSEE.

In Equity.

CALVIN AMORY STEVENS, on behalf of Holders of Internal Improvement Bonds of Tennessee, issued to the LOUISVILLE AND NASHVILLE RAILROAD COMPANY, 2

vs.

THE LOUISVILLE AND NASHVILLE AND GREAT SOUTHERN RAILROAD COMPANY.

3

CALVIN AMORY STEVENS, on behalf of Holders of Internal Improvement Bonds issued to the CENTRAL SOUTHERN RAILROAD COMPANY,

vs.

THE NASHVILLE AND DECATUR RAILROAD COMPANY, *et al.* 4

5

CALVIN AMORY STEVENS, on behalf of Holders of Internal Improvement Bonds of Tennessee, issued to the TENNESSEE AND ALABAMA RAILROAD COMPANY,

vs.

6 NASHVILLE AND DECATUR RAILROAD COMPANY, *et al.*

CALVIN AMORY STEVENS, on behalf of Holders of Internal Improvement Bonds of Tennessee, issued to the MEMPHIS AND OHIO RAILROAD COMPANY,

7

vs.

THE LOUISVILLE AND NASHVILLE AND GREAT SOUTHERN RAILROAD COMPANY.

8

CALVIN AMORY STEVENS, on behalf of Holders of Internal Improvement Bonds of Tennessee issued to the MEMPHIS, CLARKSVILLE AND LOUISVILLE RAILROAD COMPANY,

vs.

THE MEMPHIS, CLARKSVILLE AND LOUISVILLE RAILROAD COMPANY, AND THE LOUISVILLE, NASHVILLE AND GREAT SOUTHERN RAILROAD COMPANY.

It is stipulated by and between the parties to the above-named suits, in order to avoid the trouble, expense and delay of formal proof, that the following are facts proven in these causes:

First.—In reference to the bonds of the State of Tennessee loaned to the railroad companies involved in these causes and their predecessors in interest under the Internal Improvement Laws of the State of Tennessee, as a general proposition, subject probably to some exceptions, the purchasers of said bonds did not know when they purchased the same originally to what companies they had been issued. The information contained in receipts taken by the Secretary of State from the companies as to the bonds loaned before the late war was never made known except as it may be claimed to have been made known by said receipts and by the report of

13 a joint select committee of the Legislature of Tennessee, appointed by the General Assembly of 1857-8, to investigate the offices of Comptroller and Secretary of State and other purposes, made August 11, 1858, and by a report made by John C. Burchs Comptroller, in 1875. The information relative to the bonds loaned after the war was not made public except as it may be claimed to have been made public by the receipts themselves until a report was made by G. W. Blackburn, Comptroller
14 of Tennessee, in October, 1869.

The bonds were principally negotiated or transferred either in Tennessee or New York. They were either payable to bearer, using those words, or to blank or order, leaving the blank unfilled, or, if filled, it was done with some name other than the companies to whom they were loaned.

Answer No. 2,462, pp. 3 and 4.

Second.—The name of the railroad company to
15 which the bonds of the State of Tennessee were loaned under said law does not in any way appear either in or upon the bond.

Ans. No. 2,462, p. 4.

Nor the name of the railroad company to which the bonds of the State of Tennessee were issued under other laws passed by the Legislature at the session of 1852, including those issued under the act of January 15,1852, does not appear in any way
16 either in or upon the bond.

Third.—That up to to the passage of the Internal Improvement Law of February 11, 1852, the State of Tennessee had never defaulted upon the interest of her public debt, and the straight six per cent. bonds of the State were quoted on the New York Stock Exchange as follow s:

Quotations of sales of Tennessee State bonds, taken from the official reports of the New York Stock Exchange, as published in the New York *Journal of Commerce*, during the year 1852 : 17

Date of Report.	*Amt. of Sale.*	*Price.*
1852, February 24,	1,000 6's,	102.
" April 9,	7,000 6's '90	105.
" May 31,	2,000 5's,	92.
" June 17,	2,000 6's,	110.
" July 19,	2,000 5's,	92.
" December 9.	5,000 6's '68,	106.

18

Fourth.—The report of J. G. M. Ramsey, Agent of the State of Tennessee for the sale of bonds issued to the East Tennessee and Georgia Railroad, made to the Governor of the State, dated September 20, 1851, may be read by complainant on his behalf without objection to its competency. Respondents reserve the right to introduce any proof they may obtain in rebuttal of the facts stated in that report.

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Fifth.--The Tennessee and Alabama Railroad Company received from the State three hundred bonds in July and September, 1854. The English merchants who sold them their iron failed to deliver it according to contract, and the company refused to pay them, but they reserved one hundred and forty-three of the bonds until the dispute could be settled, and they continued in the company's possession until after August, 1855. On the 30th June, 1859, said company had on hand 389 State bonds, 301 of which were issued as early as June 4th, 1858. On June 30th, 1860, said company had on hand 303 State bonds, 201 of which had been issued as early as June 4th, 1858. Many other instances of a similar kind could be given where the various railroad companies preferred to use their other means in ironing and equipping the first part of their roads, reserv-

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21 ing their State bonds for ironing and equipping other parts of their roads. The companies cut the coupons from these bonds, and with them paid the interest on these bonds into the Bank of Tennessee, as they did the interest on those bonds that had been negotiated.

Ans. No. 2,462, pp. 8 and 9.

In 1852 the taxable property of Tennessee was $177,420,305. The debt of the State then amounted
22 to only $3,992,856.66, and the rate of State tax was only 11½ cents to the hundred dollars. After the loan of bonds to railroads there was no difference in the money market between prices of the bonds loaned to railroads or those issued by the State to raise the capital of the Bank of Tennessee, or to build her State house; nor was there any difference in price between the bonds loaned to the most valuable railroads and those loaned to the most worthless, except that in both of the above cases a difference of
83 from two to five per cent. on limited transactions has arisen within the last two years, in the open market in New York, but no difference has ever existed on the Stock Exchange of New York, owing to the way in which Tennessee bonds are called at said Exchange.

Respondents have caused thorough investigation to be made in each of their offices, and have been unable to find any evidence that there was any record made and kept by them of the numbers,
24 dates, or series of the bonds issued to them, and have no knowledge, information, remembrance or belief in regard thereto (p. 12). The proceeds of these bonds were applied as directed by the laws under which they were loaned to railroads (p. 13).

The Comptroller's reports show that the Sinking Fund Commissioners credited each railroad company with the annual amounts paid in, but in their

investment thereof selected any bonds of the State 25
that were offered for sale. Thus, from the Comptroller's report of 1859 (page 59), it seems that the Tennessee and Alabama Railroad Company paid to the Treasurer $6,400, which was invested in one bond endorsed by the State for the East Tennessee and Georgia Railroad Company, four State 5¼ per cent. bonds, and three State five per cent. bonds. Not one of the bonds purchased with the money paid in by that company had ever been issued to it. The idea of the State 26
at that time was to pay the interest on all the bonds that were paid into the Railroad Sinking Fund, and that the accumulation would be so rapid as to certainly raise a fund that would pay the bonds by their maturity.

In the Comptroller's report of 1859 (p. 16), he states that $82,840.95 paid in by the railroad therein named, invested, with accrued interest, had purchased bonds amounting to $109,750, which paid an annual interest of $6,417.50, or 7¾ per cent. on the 27
investment.

The State had loaned her own bonds to some of her Internal Improvement Companies; she had endorsed the bonds of some of the other companies, and has issued her own bonds to pay for her State House, and for other purposes. The result was that she had several different series of bonds issued under different laws and maturing at different times. Series A were 5 per cent. bonds issued under Act of 1838, maturing in thirty years. They were issued 28
principally to pay for stock subscribed by the State in various turnpikes and railroads, and aggregated $1,893,000. Series B were known as "White bonds, six per cent., issued under the Act of February 11th, 1852." Numbers 1 to 7,908 of this series mature in 1892, while numbers 7,909 to 11,806, do not mature until 1898. This series aggregated $11,806,000.

Series C were also known as "White bonds, six per cent., issued under the Act of February 11th, 1852," and due in 1898. This series aggregated $1,878,000. Series B and C represented the State Bonds loaned to the various railroads under the said Act of February 11th 1852, before the war. Under the Act of March 20th, 1860, to illustrate, the East Tennessee & Virginia Railroad Company paid in fifteen of their own endorsed bonds, and two regular State bonds; the Memphis & Charleston Railroad Company paid in sixteen State bonds, and $2,960 in cash; the Memphis & Ohio Railroad Company paid in six State bonds; and so have the McMinnville & Manchester Railroad, and the Tennessee & Alabama Railroad.

Though the various Acts of the Legislature and the reports of the Comptroller and of the Sinking Fund Commissioners, referred to in the answers, were all public, no bondholder was ever heard to protest against the authority assumed by the State, or against the cancellation and destruction of the securities which the companies had paid into the Sinking Fund. An opinion, however, of Judges Davis and Davies was obtained, addressed to J. J. Donaldson, Chairman of Committee of bondholders, dated May 2, 1870, which is made Exhibit X to this stipulation. No bondholders ever presented a State coupon to any railroad company for payment. No Tennessee railroad company had any banker or other correspondent in New York to pay the coupons on the State bonds loaned to it. No company ever retained in its possession the coupons that had been paid on the bonds loaned to it.

As long as the Bank of Tennessee was in operation it was regarded as the fiscal agent of the State. All of its directors were appointed by the State. They were required to report to the State and were constantly kept under its control. The State Treas-

urer kept none of the State funds in his own hands, 33
but deposited all the revenues of the State in the
Bank of Tennessee, and could only check for the
same on checks countersigned by the Comptroller.
The Bank of Tennessee paid the interest on all the
State bonds, without reference to the purpose for
which they were issued. This is shown by the re-
port of the Comptroller to the Session of 1851-2,
when the general Internal Improvement Law was
passed. (See his report, page 65.) The Merchants'
Bank of New York and the Bank of North America 34
of Philadelphia, were the correspondents through
whom the Bank of Tennessee paid the interest
on the State debt. These correspondents would re-
turn the coupons to the Bank of Tennessee, by
whom they were returned to the State. There was
one account on the books of the Bank of Tennessee
headed "Treasurer of Tennessee," which was
credited by the revenues of the State deposited by
the Treasurer, and by the dividends derived from
the State's stock in the bank, and the various in- 35
ternal improvement companies in which the State
was a stockholder, and was debited by the interest
on the entire State debt paid by the bank of Ten-
nessee, and by such other sums as were drawn by
the Treasurer under appropriations made by law.
There was also an account on the books of the Bank
of Tennessee headed "Interest paid on State Bonds,"
the object of which was to show the exact amount
paid on that account, but it shows nothing as to
whom, or for what purpose the bonds were issued 36
upon which such interest was paid. There was also
an account headed "Railroad Companies, for In-
terest," showing the amounts and dates of all pay-
ments into the bank by the different companies, but
it does not show that the payments were to be ap-
propriated to the interests upon any particular

37 bonds of the State; nor did the bank, in fact, know what bonds had been issued to any named railroad.

The funds paid in by all the railroads were transferred either to the Treasurer's general account or to the account headed "Interest on State Bonds."

The Bank of Tennessee kept entries in its books showing the amount which each railroad company paid in for account of its interest. It is stipulated that extracts from the books of the bank may be read by either party. The moneys paid in by the
38 railroads were sent by the Bank of Tennessee, with other funds to New York and Philadelphia, where they were paid out by the correspondents aforesaid upon coupons of the State, making no distinction between the different bonds of the State.

These correspondents kept no accounts with the railroad companies, and did not know to whom the bonds were issued, the coupons of which they were paying.

39 The Merchants' Bank of New York City was the correspondent in New York, through whom the Bank of Tennessee paid nearly all the interest-coupons payable at New York on the bonds of the State of Tennessee, issued for all purposes, and this agency continued from 1852, through the years 1853, 1854, 1855, 1856, 1857, 1858, 1859, 1860, and to April, 1861.

The ledgers of the Merchants' Bank of New York and the books in which they took the receipts of
40 coupon-holders and the detailed statements of paid coupons forwarded regularly every six months by the Merchants' Bank to the Bank of Tennessee, show that as to all the bonds issued under the Act of 1851-2, Chap. 151, or Acts amendatory thereof, the Merchants' Bank did not keep, nor attempt to keep, an account showing the railroad company to whom the bonds were issued, the coupons on which

were paid, nor did they attempt to classify or iden- 41
tify the coupons, when paid, as being coupons from bonds issued to any particular railroad company.

The only accounts shown on the books of the Merchants' Bank for said years with the Bank of Tennessee were two: first, the general reciprocal account, on one side of which appeared the gross sums of money to the credit of the Bank of Tennessee, and on the other its checks and drafts; secondly, an interest or coupon account, showing the amount of coupons paid, and this account 42
was credited with and balanced by checks drawn by the Bank of Tennessee upon its regular account and balance in the Merchants' Bank at the time, without any discrimination as to the coupons to which the payments were applied.

This admission is made alone to save the expense and trouble of making copies of the entries from said books of the Merchants' Bank, and states truly the facts as they actually appear on said books.

When the State of Tennessee was in default in the 43
payment of interest on any of its bonds it was in default on all of them then matured, except such as were held by the East Tennessee University and the Commissioners of the Common School Fund, which were provided for by special legislation.

Each coupon could be identified when detached from its bond as having been separated from their respective bonds, which identification existed by means of the color, letter and number of the instruments. 44

In the Treasurer's books an account was headed "Bank of Tennessee," the reverse of the account kept under his name at the said bank. There is also an account headed "Interest on Capital Bonds," in which is shown the interest paid on the bonds issued to pay for the State House.

There is also an account headed "Interest on In-

ternal Improvement bonds." It shows the gross amount paid out on such bonds, but it does not show by whom the money was furnished, nor does it show the number or character of the bonds on which the interest was paid. There are no separate accounts with the different railroads to be found on the Treasurer's books. With the exception of the distinction between Capitol and Internal Improvement bonds, the Treasurer made no difference between the various bonds of the State, but treated all as equally the obligations of the State.

The interest on the bonds loaned to respondents was not paid after July 1, 1861, except as hereinafter stated. And though the United States Circuit Court was open in Nashville, after its capture by the United States army in February, 1862, no bondholder ever claimed the right to a receiver for nonpayment of interest.

The copies of the resolution and report attached as Exhibits A and B, to the answer of the L. & N. R. R. Co. No. 2,462, are admitted to be correct copies. They were published in the acts and journals of that session.

The bonds and coupons were paid by the L. & N. R. R. Co. as therein stated. The bonds cost 68 4-10 cents per dollar, which includes per cent. of overdue coupons. The bonds paid to the State by the Memphis & Ohio Railroad Company cost 63 9-10 cents on the doilar. The bonds with which the Memphis, Clarksville & Louisville Railroad was bought, cost 63 7-10 cents on the dollar. The above prices include per cent. of overdue coupons which price includes the overdue coupons. And no one ever controverted the right of the State to make a settlement until this bill was filed, except so far as the opinion addressed by Judges Davies and Davis to J. J. Donaldson as Chairman of the Committee of Tennessee bondholders circulated in pam-

phlet in New York City and some in Europe in 49
1870, may be so considered.

The Louisville & Nashville Railroad Company on April 8th, 1868, executed a mortgage or trust deed duly registered, upon its main stem and branches, to James Punnett and Junius B. Alexander, citizens of the State of New York, to secure an issue of eight millions of dollars of bonds of which $7,070,000 were sold in Europe and are now outstanding in the hands of European holders for value, who had not received any notice of the existence of any 50
claim to a statutory lien on the roads, except such as may be implied from the Tennessee laws of 1851-2, and their amendments, and the fact that the said opinion of Judges Davies and Davis addressed to J. J. Donaldson as Chairman of the Committee of bondholders was circulated as aforesaid.

The said Punnett has since died, and John B. Smith, a citizen of Louisville, Kentucky, has been substituted as trustee. On November 1st, 1873, said company executed another mortgage or trust deed. 51
duly registered, conveying the same property and also the Memphis & Ohio and the Memphis, Clarksville & Louisville Railroads to Henry F. Vail, a citizen of the State of New York, and John B, Smith, a citizen of Louisville, of Kentucky, to secure an issue of four million dollars of bonds, of which two million are now outstanding in the hands of holders for value, who had not received any notice of the existence of any claim to a statutory lien on the roads, except such as may be implied 52
from the Tennessee laws of 1851–2, and their amendments, and the fact that the said opinions of Judges Davies and Davis addressed to J. J. Donaldson, as Chairman of the Committee of bondholders, was circulated as aforesaid. In March, 1865, the bonds of the State of Tennessee were of the market value of fifty cents, but in December, 1865, they were at 92

53 cents in the dollar, as stated by the Financial Review of New York. The Nashville & Decatur Railroad Company, created by the consolidation of the Tennessee & Alabama Railroad Company and the Central Southern Railroad Company, in March, 1871, paid to the State of Tennessee $2,368,176 in bonds and coupons of the State. Said company had raised the money to buy the bonds and coupons paid in by them, by mortgaging the road for $2,-100,000, in 1870, and selling the company's bonds
54 in the New York market. None of the State bondholders attempted by any legal proceedings to assert any rights in opposition to the course which that company was pursuing except so far as obtaining the opinion of counsel above referred to. And the Louisville & Nashville Railroad Company leased said Nashville & Decatur Railroad in May, 1871, agreeing to pay $2,450,000, of the debts of said company, and an annual six per cent. dividend upon its capital stock of $1,512,184.11, and in addition
55 to all this, the Louisville & Nashville Railroad Company have spent $ over and above their receipts in the repair and operation of said road.

On May 25th, 1871, the Memphis & Ohio Railroad Company paid the State of Tennessee $2,468,376.50 in bonds and coupons of the State. On the first of June, 1871, the Memphis & Ohio Railroad Company mortgaged its road for $3,500,000 of bonds, which were originally sold and are still held in Europe by
56 holders, who had not received any notice of the existence of any claim to a statutory lien on the roads except such as may be implied from the laws of Tennessee of 1851-2, and their amendments, and the said opinion of Judges Davies and Davis addressed to J. J. Donaldson as Chairman of the Committee of Bondholders, circulated as aforesaid. No State bondholders having made any complaint to

Court or addressed to them, the Louisville & Nash- 57
ville Railroad Company consolidated with said Memphis & Ohio Railroad Company, endorsed said $3,500,000 of said bonds, and have since expended $ over and above their receipts in the repair and operation of said road.

In January, 1871, the State of Tennessee filed its bills in the Chancery Court at Nashville, Tennessee, against the Memphis, Clarksville & Louisville Railroad Company, to whom State bonds had been loaned, upon which such proceedings were had as 58
will appear by a certified transcript of the record to be filed in these cases. The State bondholders have never sought to review or reverse said decree.

On August 1st, 1872, the Louisville & Nashville Railroad Company placed a mortgage on said last named road for $2,465,000 of bonds which the Louisville & Nashville Railroad Company endorsed, and which were originally sold in Europe in 1872, and are still held there by holders for value, who had not received any notice of the existence of any 59
claim to a statutory lien on the roads, except such as may be implied from the Tennessee laws of 1851–2, and their amendments, and the said opinions of Judges Davies and Davis addressed to J. J. Donaldson as Chairman of the Committee of Bondholders, circulated as aforesaid. Said Louisville & Nashville Railroad Company have also expended $ over and above their receipts in the repair and construction of said road.

With the exception of some interest paid in 60
1867–8, and some paid in 1874–5, the State of Tennessee has paid no interest since the commencement of the late war, and the remainder of the interest has all been funded into new bonds of the State, except that which matured since January 1st, 1876, and it has neither been funded nor paid. The Act of 23d November,

61 1865 (see Public Acts, 1865-6, pp. 11 and 12) was carried into execution as to all the railroads in this litigation.

All, or nearly all, of the past due coupons referred to in said Act were fuunded by the present bondholders or those under whom they claim. The coupons were delivered to the State, pasted in books kept in the comptroller's office, and new bonds received from the State for the old coupons. A new bond might have been for coupons on bonds
62 loaned to several different railroad companies or on bonds not loaned to any railroad company, and so of the practice under the funding Act of 1873.

The Nashville and Decatur Railroad Company and the original companies forming the consolidation had received State bonds, which, with interest and sinking fund, amounted to $2,368,176. They met their interest in January, 1869, but fell behind $15,955.26 on their interest for July, 1869.

63 This authorized the State to appoint a receiver; and experience on other roads had taught that in every instance these State receivers had run the roads down, without ever reducing the indebtedness.

In October, 1869, the debt of Tennessee was $37,590,027.08, of which about $30,000,000 were for bonds loaned to railroad companies, with funded interest thereon. The State's bonds ranged in New York in 1869 from 70 cents in January to 40½
64 cents on the dollar in December, there being no distinction between bonds loaned to railroads and any other bonds.

On July 1, 1870, the Nashville and Decatur Railroad Company executed a mortgage or trust deed upon their railroad property, rights and franchises, conveying the same to Philo C. Calhoun, Richard T. Wilson and Adrian Iselin, all citizens of the

State of New York, to secure first mortgage bonds 65
to the amount of $2,100,000 issued and negotiated to raise the money to buy the State bonds to pay the debt due from said company. Said mortgage was duly executed and registered. The bonds are now outstanding in the hands of persons who for most part are citizens of States or countries other than Tennessee, holders for value, who had not received any notice of the existence of any claim to a statutory lien on the roads, except such as may be implied from the Tennessee laws of 1851-2, and 66
their amendments, and the said opinion of Judges Davies and Davis addressed to J. J. Donaldson as chairman of the Committee of Bondholders, circulated as aforesaid.

The following is a copy of one of said bonds:

[*Form of Bond.*]

No.. UNITED STATES OF AMERICA. $1,000.

STATES OF TENNESSEE AND ALABAMA. 67

THE NASHVILLE AND DECATUR RAILROAD COMPANY.

7 *per cent. First Mortgage Sinking Fund Bond.*

The NASHVILLE AND DECATUR RAILROAD COMPANY promise to pay to the holder of this Bond, on the first day of July, one thousand nine hundred, for value received, the sum of *one thousand dollars*, in lawful money of the United States, in the City of New York, with interest in the meantime at the rate 68
of *seven per cent.* per annum, payable semi-annually on the first day of January and July of each year on delivery of the annexed interest warrant.

U. S. Int. Rev. Stamp. $1.05.

This bond, with others of like tenor and date, amounting in the aggregate to a sum not exceeding two million one hun-

dred thousand dollars, is secured by a first mortgage on the railroad and franchises of said company made by Philo C. Calhoun, Richard T. Wilson, and Adrian Iselin, and is entitled to the benefit of a sinking fund, as set forth in the deed of trust.

This Bond shall pass by delivery or by transfer on the books of the company. After a registration of ownership, certified hereon by the Transfer agent of the Company, no transfer except on the books of the company shall be valid unless the last transfer be to bearer.

IN WITNESS WHEREOF, the said Nashville and Decatur Railroad Company has caused this bond to be signed by its President and Secretary, and its corporate seal to be hereunto affixed, at the City of Nashville, Tennessee, on the first day of July, Anno Domino one thousand eight hundred and seventy.

J. W. SLOSS,
President.

[SEAL.] G. W. SEAY,
Secretary.

I certify that the Nashville and Decatur Railroad Company has paid off the debt to the State of Tennessee, which was created by the loans of the bonds of said State, and for interest thereon, and that this bond is secured by a first mortgage, and is issued under authority of law, and takes the place of the lien which was held by the State.

ED. R. PENNEBAKER,
Comptroller of the State of Tennessee.
By P. C. CALHOUN,
Prest. Agent.

ONE THOUSAND DOLLARS.

SECURED BY FIRST MORTGAGE.

[*Form of Coupon.*] 73

THE NASHVILLE AND DECATUR

$35 Railroad Company $35

will pay the bearer in the City of New York Thirty-five dollars in lawful money of the United States, on the first day of.... 18.. for semi-annual interest on bond No....

G. W. SEAY,
Secretary.

[*Trustees' Certificate.*]

We certify that this bond is one of a series not ex- 74
ceeding two million one hundred thousand dollars, described in and secured by the deed of trust or mortgage mentioned herein, bearing date first day of July, Anno Domini one thousand eight hundred and seventy, which was duly recorded.

P. C. CALHOUN,
R. T. WILSON,
ADRIAN ISELIN, } *Trustees.*

75

The State Comptroller in his report in 1869, page 50, suggested to the Legislature the propriety of selling a sufficient number of the railroads for bonds of the State, to lessen the State's liabilities eight or ten millions of dollars, he believing with such reduction the State's liabilities could be regularly and certainly met His report in 1867 (page 67) shows that the railroads then owed $800,000 for interest due July 1st, 1867, which the State had paid on the bonds loaned them.

The Comptroller in his report for 1867 states that the 76
records of his office show that from the railroads then in the hands of Receivers scarcely a dollar had been received during the past fiscal year (page 13). If the State had forced a sale of all the delinquent railroads so large an amount of such property thrown upon the market, in the depressed financial condition of the country, would have sacrificed alike the

77 interest of the companies and the State, but by allowing the companies to pay their debts in any of the bonds of the State, and giving them a reasonable time in which to get the bonds, they were enabled to procure them at reasonable rates, and by reducing the aggregate debt of the State, they increased the ability of the State to pay, and the bonds of the State which were quoted as low as 40½ in December, 1869, were quoted as high as 91¼ cents on the dollar in March, 1874, at the New York
78 Stock Exchange.

An elaborate opinion was written at the instance of the Nashville and Decatur Railroad Company, by Colonel Pryor, which was concurred in by the Hon. E. H. East, of Nashville, who was then and is now one of the most eminent lawyers of Tennessee. The object of asking the opinion was not to satisfy said company, but to place the question fairly before the money markets of the world, where said company was trying to raise the means to buy the
79 bonds to deliver to the State as they claimed in payment of their debt to the State. The respondents knew nothing of any opinion of New York counsel to the same effect that was published at or about that time. It is true that the transaction in all its entirety was fully understood by the N. & D. R. R. Co., and they supposed it was also understood by the purchasers of their new bonds, as the legislation under which they were issued was referred to in the mortgage, and the opinion of Colonel
80 Pryor was published to give information on the subject. Said company acted upon the advice of counsel, and in confidence that said advice was correct.

It is stipulated that the amount of bonds received from the State of Tennessee, the dates of default stated in the pleadings, are true.

It is admitted that there had been issued to the

Memphis and Ohio Railroad Company State Bonds 81
which, with interest and sinking fund, amounted
in year to $2,396,110. They met their in-
terest in January, 1867, but failed to pay their
interest for July, 1867. The Governor, however,
felt bound to comply with the law and appointed a
Receiver to take charge of the road; said company
were also heavily indebted for labor, materials and
supplies. The earnings were insufficient to pay
operating expenses, and additional means were
needed to put the road in a safe condition. 82

The Louisville and Nashville Railroad Company
being greatly interested in the efficient operation of
said road as a part of the Louisville and Memphis
line, had already advanced to said Memphis and
Ohio Railroad Company $125,000, and then agreed
to lease their road, to pay the interest on the State
Bonds to the State of Tennessee, and to pay the
debts of said company incurred since the war in the
reconstruction and operation of the road. They
were to reimburse themselves, if possible, from the 83
earnings of the road, but if there should be a sur-
plus of earnings, it was to be paid over to the Mem-
phis and Ohio Railroad Company (p 33).

The Louisville and Nashville Railroad Company
paid the interest upon the bonds loaned to said last-
named road. Said payments were made regularly
each six months from July, 1867, to July, 1871.
Each semi-annual payment amounted to $71,883.30,
and they were made mostly in cash, though some
were made in past-due bonds and coupons of the 84
State. During most of this time the State was in
default upon the interest due on the bonds loaned
to the Memphis and Ohio Railroad Company, and
was using for other purposes the money which the
Louisville and Nashville Railroad Company were
paying to enable her to meet interest on said
bonds.

85 On the 25th of May, 1871, the Memphis and Ohio Railroad Company paid the State of Tennessee $2,468.376.60, in bonds and coupons of the State, as the company claimed in full of all claims and demands of said State against said company, and in full discharge and satisfaction of all liens upon the property, rights, franchises and privileges of said company originating in, or created by the loan or issuance and delivery to said company of the bonds of said State under or by virtue of the Act of the
86 Legislature of said State, passed the 11th day of February, 1852, entitled, "An Act to create a system of internal improvements in this State," and under the Acts amending the same, or any other Acts of said Legislature.

The Comptroller of said State executed and delivered to said company a receipt evidencing said payment, and a copy of said receipt is hereto filed, marked Exhibit C., to the Mem. & O. Answer.

On June 1st, 1871, said Memphis & Ohio Rail-
87 road Company executed a mortgage or trust deed upon their railroad property, rights and franchises conveying the same to Junius B. Alexander, a citizen of New York, and John B. Smith, a citizen of Kentucky, to secure $3,500,000 of claiming or purporting to be first mortgage bonds. Said mortgage was duly executed and registered, and the bonds originally negotiated in Europe in 1871, are now outstanding in the hands of holders there for value, who had not received any notice of the existence of
88 any claim to a statutory lien on the roads, except such as may be implied from the Tennessee laws of 1851, '2, and their amendments, and the circulation as aforesaid of the said opinion of Judges Davies and Davis, and addressed to J. J. Donaldson, as Chairman of Committee of Bondholders.

After the Memphis and Ohio Railroad Company had delivered the bonds to the State as aforesaid,

and had mortgaged their road, the Louisville & 89
Nashville Railroad Company endorsed $3,500,000
of bonds secured by said mortgage, and on Octo-
ber 9th, 1872, entered into formal articles consoli-
dating the two companies as stated above, the con-
solidation becoming bound for all the debts of the
Memphis & Ohio Railroad. The articles of consol-
idation were duly registered in October, 1872, in all
the counties in Tennessee through which the Mem-
phis and Ohio Railroad ran.

On November 1st, 1873, the Louisville & Nash- 90
ville R. R. Co. executed a mortgage on their main
stem and branches, including the Memphis & Ohio
Railroad, conveying the same to Henry F. Vail, a
citizen of New York, and John B. Smith, a citizen
of Kentucky, to secure $4,000,000 of bonds,
$2,000,000 of which are now outstanding in the
hands of *bona fide* holders for value, who had not
received any notice of the existence of any claim to
a statutory lien on the road, except such as may be
implied from the Tennessee laws of 1851-2, and 91
their amendments; and the circulation as aforesaid
of the said opinion of Judges Davies and Davis ad-
dressed to J. J. Donaldson, as Chairman of the
Committee of bondholders. Said mortgage was
duly registered (p. 37).

With reference to the answer in the Memphis,
Clarksville and Louisville R. R. Co. The M. C.
& L. R. R. Co. having defaulted on its interest the
Governor placed it in the hands of a Receiver as
early as July 1st, 1865, and though it was continued 92
under State Receivers until it was sold "it never
paid one cent into the treasury on any account
whatever."

The easterly span of the Cumberland River
Bridge and the whole of the bridge over the Ten-
nessee River had been destroyed during the war,
some of the trestling had been swept away, some of it

had been thrown out of position, and all of it that was standing needed extensive repairs. One of the most frightful railway accidents of modern times occurred on this road in consequence of a passenger train running through the Budd's Creek trestle. The dirt embankments had been badly washed, and the cuts filled up with mud, in some instances ten feet deep. Many parts of the road were overgrown with grass, weeds and briars. The farmers along the road, being in need of iron during the war, had taken rods, bolts, spikes and chairs for blacksmithing purposes, and had even cut the bridges and trestles to get the iron. Switch circles, targets and connecting rods were taken off and used for the same purpose.

This railroad is about eighty-two miles long. The termini are both small villages of no commercial importance, and the country traversed is poor and sparsely settled. The road crosses three large rivers, and numerous small streams requiring many bridges and trustles. The cost of construction and maintenance of way is enormous, while the local business of the road is almost nothing. To have kept such a road in operation through a receiver until the State bonds loaned to it matured would have cost the State millions of dollars. To have allowed it to remain unused would have been equivalent to abandoning it to waste and destruction, and as to the company keeping it up, they were utterly insolvent, and as early as March 28, 1867, initial proceedings to go into voluntary bankruptcy, for which purpose they afterwards filed a petition in the United States District Court at Nashville.

It is agreed that the bill of the Memphis, Clarksville and Louisville Railroads against the Commissioners for the sale of delinquent railroads and the action thereon may be read.

After their purchase of the Memphis, Clarksville

and Louisville R. R. Co., the Louisville and Nash- 97
ville Railroad Company executed a mortgage upon said Memphis, Clarksville and Louisville Railroad Company, conveying it to Junius B. Alexander, a citizen of New York, and John B. Smith, a citizen of Kentucky, to secure $2,465,200 of bonds, which were endorsed by the Louisville and Nashville Railroad Company and negotiated in Europe in 1872, where they are now outstanding in the hands of purchasers for value. Said mortgage was executed August 1, 1872, and shortly thereafter was duly 98
registered in all the counties through which said road runs. The purchasers of said bonds had not received any notice of the existence of any claim to a statutory lien on the roads except such as may be implied from the Tennessee laws of 1851-2, and their amendments, and the circulation as aforesaid of the said opinions of Judges Davies and Davis, and addressed to J. J. Donaldson as Chairman of the Committee of Bondholders.

Afterwards, on November 1, 1873, the Louisville 99
and Nashville Railroad Company executed a mortgage on their main stem and branches, including said Memphis, Clarksville and Louisville Railroad to secure $4,000,000 of bonds, $2,000,000 of which are now outstanding in the hands of purchasers for value who have not received any notice of the existence of any claim to a statutory lien on the roads except such as may be implied from the Tennessee laws of 1851-2, and their amendments, and the circulation as aforesaid of the said opinion of Judges 100
Davies and Davis addressed to J. J. Donaldson as Chairman of the Committee of Bondholders. Said mortgage conveyed said property in trust to Henry F. Vail, a citizen of New York, and John B. Smith a citizen of Kentucky, and was, shortly after its execution, duly registered in all the counties through which said Memphis, Clarkville and Louis-

101 ville Railroad runs. Said road lies entirely within the State of Tennessee.

It is admitted that the complainant received several years ago from his father, who had been an owner of Tennessee bonds for many years, an amount between one and two hundred thousand dollars of said Tennessee bonds; he also became an owner of such bonds by individual purchases made on his own account about eight years ago. The aforesaid bonds cost his father and himself more
102 than eighty cents on the dollar; and that in addition thereto for some time prior to the filing of these bills, he was engaged in the New York market in selecting Tennessee State bonds loaned to the Central Southern and the other companies involved in these suits, and has been buying Tennessee bonds on the market at heavy rates of discount, at less than fifty per cent. of their par value; that he has been exchanging Tennessee bonds which had not been loaned to railroads for bonds issued to res-
103 pondents, paying one or two per cent. for the exchange.

That at the time he was making these transactions he knew that the defendant railroad companies claimed that they had paid their entire debts on account of Tennessee bonds, and denied all liability either to the State or to the bondholders for bonds, but complainant relied upon what he thought were the rights conferred upon holders of such bonds by the Internal Improvement Act of February 11, 1852,
104 and its amendments, and did not believe that it was in the power of the State and the railroad companies to discharge the lien which he believed was created by those acts except by actual payments to the holders.

Some of the bonds sued on in these suits were received from complainant's (Stevens) father; some were purchased about eight years ago by him, some

were recently acquired by him by purchase or ex- 105
change, as stated above. That James L. Gaines has been Comptroller of the State of Tennessee since January, 1875.

It is further stipulated that all statutes, public documents and records of the State of Tennessee may be read as evidence by either party on the hearing of the causes, subject to exception for irrelevancy. They may be so read, as may also the public statutes of New York, from the usual official publications, without any more formal proof, except 106
that either party may introduce certified copies of the original documents where any difference appears between the published volumes and such originals. Other facts not embraced in this stipulation and deemed material by either party may be subject of proof in the usual mode.

It is further agreed that all five of the above cases may be heard at the same time and place before the same Court.

E. L. ANDREWS, 107
Solicitor for Complainants.
ED. BAXTER,
Solicitor for Respondents.

August 14, 1879.

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